

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

% *Judgment Reserved on: 15th April, 2010*
Judgment Pronounced on: 19th April, 2010

+ **CRL.APPEAL No.960/2008**

SHAKEEL Appellant
Through: Ms.Nandita Rao, 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 the Reporter or not?
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J.

1. Jogender Prasad PW-2 was examined by the prosecution as their witness on 7.5.2003. Cross-examination was deferred as counsel for the accused was not present. The matter was adjourned from time to time till 16.2.2004. On said date an order was passed recording that counsel for the accused was refusing to cross-examine Jogender Prasad because the viscera report of the deceased was not on record. The learned Trial Judge held that the testimony of Jogender Prasad, a public witness, had no concern with the viscera report. Noting the continued refusal by the counsel to cross-

examine Jogender Prasad, further noting that the Supreme Court had repeatedly held that public witnesses should be examined with the maximum possible speed, request for adjournment was declined and Jogender Prasad was tendered for cross-examination. Noting that the counsel and the accused did not avail the right to cross-examine Jogender Prasad, it was recorded that the witness has remained uncross-examined.

2. No steps were taken to challenge the order dated 16.2.2004 which attained finality. Regretfully, the order has not even been challenged in the instant appeal.

3. Criminal Law was set into motion when DD No.2, Ex.PW-3/A, was recorded at PS Sangam Vihar at 8:03 AM pertaining to foul smell emanating from a room occupied by a tenant in House No.140, Gali No.8, Ratia Marg, Amar Singh Wali Gali. Copy of DD No.2 was handed over to ASI Hari Ram PW-3, who accompanied by Const.Shankar (not examined) proceeded to the said house and found a room locked from which foul smell was emanating. He broke the lock and seized the same vide memo Ex.PW-2/E and on entering the room saw the dead body of a female which was in a highly decomposed state. Noting that he had broken the lock and seized the same and had found the dead body of a female in a highly

decomposed condition, ASI Hari Ram prepared the tehrir Ex.PW-3/B and dispatched the same for FIR to be registered. At the police station the FIR Ex.PW-1/A was registered. The dead body was seized and sent to the mortuary for post-mortem. Dr.Varun Dixit conducted the post-mortem and prepared the post-mortem report Ex.PW-14/A, proved at the trial by Dr.Manish PW-14, since Dr.Varun Dixit had left employment and Dr.Manish was familiar with the writing and signatures of Dr.Varun Dixit. The post-mortem report does not give any opinion as to the cause of the death of the deceased. No internal injuries whatsoever were detected. No external injuries whatsoever were detected. It was noted that the dead body was highly decomposed with maggots. It was opined that the death was more than one week prior to the date when post-mortem was conducted, being 17.4.2002. Being relevant for our discussion, the general features of the body were noted in detail as under:-

“A dead body of young female brought to mortuary for post-mortem. The body in high stage of decomposition. The body had violet salwar and kameez with white cheque. On external examination distension of face, abdomen and thighs present due to decomposing gases. Peeling of skin all over the abdomen, legs and arms, degloving of skin, the hands, marbling present all over the abdomen. Rigor mortis passed off, post-mortem liquidity with the greenish discolouration of decomposition swelling. Maggots present all over the body, all over the neck, armpits, pubic region and size 0.5 cm, post-mortem blebs present over (illegible) skin from the scalp peeled off

*with the scalp (illegible) collapse due to decomposition. **Mouth open with tongue protruding between the teeth.***

4. Since cause of death could not be detected during post-mortem, the viscera of the deceased was kept in a jar and sent for analysis and as per report Ex.PW-11/A proved by its author Mrs.Kavita Goel PW-11, no poison of any variety could be detected in the viscera.

5. As deposed to by Jogender Prasad PW-2, whose statement was recorded by the investigating officer under Section 161 Cr.P.C. during investigation, appellant Shakeel was his tenant since about 1½ months prior to 13.4.2002 and deceased Bilkis was his wife and the two used to live in the room taken on rent. They used to quarrel and inspite of his reasoning with them, the quarrels continued. He found in the morning of 14.4.2002 that the room taken on rent was locked and he thought that husband and wife may have gone out. The room continued to remain locked for 2 – 3 days, till on 16.4.2002 he detected foul smell emanating from the room and called the police who seized the dead body. The broken lock was taken into possession as entered in the memo Ex.PW-2/E which bore his signatures at point 'A'. That after appellant was apprehended he i.e. Jogender Prasad went to the police station when disclosure statement Ex.PW-2/A made by the

appellant was recorded. Thereafter the appellant led the police to the boundary wall of Air Force Station and got recovered a chunni and a key which were seized vide memo Ex.PW-2/D.

6. ASI Hari Ram PW-3 deposed facts as noted herein above in para 3 pertaining to ASI Hari Ram and stated that he seized the broken lock as recorded in the memo Ex.PW-2/E.

7. Since it was a case of apparent murder, after the FIR was registered, Insp.Neeraj Kumar PW-12 took over the investigation and as deposed to by him after the accused was apprehended he made a disclosure statement Ex.PW-2/A on 18.4.2002 as per which he not only admitted to the crime but stated that he can get recovered a chunni with which he had strangled his wife Bilkis i.e. the deceased and that he could get recovered the key of the room. Thereafter, he led the police to near Air Force Station boundary wall and pointed out the place claiming that he had thrown the chunni and the key at the said place. Both were recovered as entered in the memo Ex.PW-2/D. He identified the key Ex.P-3 as the one which was recovered. He identified the lock Ex.P-2 as the one which was seized at the spot.

8. The key Ex.P-3 and the lock Ex.P-2 were subjected to forensic analysis and as deposed to by Dr.Swaroop

Vendanand PW-15, he had examined the lock and the key. As per his report Ex.PW-15/A the lock and the key had the name of the same manufacturer embossed thereon. The lever inside the lock was found matching with that of the key. He clarified that since the lock was broken, it was not possible to operate the key on the lock.

9. When examined under Section 313 Cr.P.C. the appellant denied all and sundry. He denied being a tenant under Jogender Prasad. He denied Bilkis the deceased being his wife. He denied that he used to quarrel with the deceased. He denied having made any disclosure statement and stated that his signatures were obtained on blank papers. He denied having got recovered any chunni or the key to any lock.

10. In view of the testimony of Jogender Prasad PW-2 and the fact that the key of the lock placed on the door of the room inside which room dead body of Bilkis was found, the learned Trial Judge has convicted the appellant for the offence of having murdered his wife vide impugned judgment and order dated 9.7.2008. Vide order on sentence dated 9.7.2008, the appellant has been sentenced to undergo imprisonment for life and pay a fine in sum of Rs.1,000/- in default to undergo simple imprisonment for one month.

11. Arguing the appeal, learned counsel for the appellant urged that the prosecution has led no evidence to prove that the deceased Bilkis was the wife of the appellant. Learned counsel urged that no article connecting the appellant with the place where the crime was committed was seized; submission made was that as per the prosecution the room where the dead body of Bilkis was found was the residence of the appellant and thus clothes or personal effects of the appellant ought to have been recovered from the place. The recovery of the key Ex.P-3 pursuant to the disclosure statement of the appellant was challenged on the ground that the recovery is from an open place accessible to others. With reference to the post-mortem report Ex.PW-14/A and the viscera report Ex.PW-11/A it was urged that the cause of death being not detected, it cannot be said that the death of the deceased was homicidal.

12. Pertaining to the plea that the prosecution has not proved that Bilkis i.e. the deceased was the wife of the appellant and since no personal articles of the appellant were seized from the room where dead body of Bilkis was found, the case of the prosecution must fall, suffice would it be to state that the uncontroverted testimony of Jogender Prasad is sufficient to repel said contentions. By not testing the veracity

of what he deposed, it is apparent that Jogender Prasad has to be believed.

13. We would like to pen a few words on the question, though not raised, whether the appellant has been prejudiced on account of his counsel not cross-examining Jogender Prasad and if we find prejudice caused, what should be the direction issued.

14. Having perused the testimony of Jogender Prasad and the statement recorded by the investigating officer during investigation, we find no improvement whatsoever made by Jogender Prasad while deposing in Court. None can belittle the effect of cross-examination, which is a very powerful weapon in the hands of the opposite party and probably is the only tool to discredit the sworn testimony of a witness. But, what is required at a criminal trial is to grant a fair opportunity to the defence and not the perfect opportunity to the defence. After all, the interest of the society in maintenance of law and order and securing conviction of the culprits is also of paramount importance in a civil society.

15. Experience guides us that whenever eye-witnesses have stood by their versions given to the police, every trick up the sleeve is used by the accused through their counsel to delay cross-examination of the witness and the time interval is

used to browbeat, intimidate, coerce or win over the witness. Cases are legion where Courts have dealt with the issue of credibility of a witness who during examination-in-chief fully supports the case of the prosecution and when cross-examined after months of his examination-in-chief turns fully hostile. It needs not much intelligence to put two plus two together in such cases. Obviously, the witness has been threatened, coerced or intimidated into submission. This is the reason why Courts have insisted on public witnesses being cross-examined immediately after their examination-in-chief is over. It is apparent that in the instant case, the appellant and his counsel had planned a strategy of contrivance. It is apparent that PW-2 Jogender Prasad was not being cross-examined so that time could be gained to browbeat him or somehow win him over. Jogender Prasad had only deposed to the fact of appellant and deceased Bilkis residing as tenants in a room in his building and as per his knowledge the two being husband and wife. He has deposed of seeing the room locked in the morning of 14.4.2002 and continued to being remained locked till foul smell was detected by him on 16.4.2002 and the police breaking the lock and recovering dead body of Bilkis from the room. What had the viscera report got to do for the purposes of cross-examining Jogender Prasad? Obviously nothing. Thus, the reason given by learned counsel for the

appellant to not cross-examine Jogender Prasad, having no legs to stand on, we conclude by holding that the appellant must suffer the consequence of his failed strategy of contrivance. Thus, the entire testimony of Jogender Prasad being unchallenged has to be read against the appellant. Further, why would Jogender Prasad be telling a lie? We see no reason for him to do so.

16. On the issue of the recovery of the key Ex.P-3 pursuant to the disclosure statement of the appellant, the plea that the recovery is from a place accessible to others is neither here nor there for the reason, as held in the decision reported as 1999 (4) SCC 370 State of H.P. vs. Jeet Singh, the test is not whether the place was accessible to others but whether it was ordinarily visible to others. Nothing has been brought out while cross-examining the witnesses to the recovery that the place wherefrom the key was recovered was visible to others.

17. We may add that the nature of the object recovered is also important. A small little key on being misplaced in the house is difficult to be found. Thus, even if recovered from a place which could be not only accessible but visible to all, so small is a key that it would go undetected by the eyes of a common man and unless a person has knowledge of the place where he threw it and leads somebody to the spot and points

out the same, it may be impossible to detect and recover the key.

18. Thus, the prosecution has successfully proved that the key in question was got recovered by the appellant and through the testimony of Dr.Swaroop Vedanand has further proved that the key was of the lock placed at the door of the room, which lock had to be broken by ASI Hari Ram PW-3, within which the dead body of Bilkis was found.

19. How did the deceased die? Was her death homicidal? If yes, has the prosecution proved that the appellant is the culprit?

20. It is no doubt true that the doctor conducting the post-mortem on the dead body of Bilkis could not render any positive opinion as to the cause of her death. It is true that there are no apparent and visible signs of manual or ligature strangulation on the neck of Bilkis. But, as opined in the book **Forensic Medicine** by P.V.Guharaj (page 180): *'Where death has taken place immediately from reflex cardiac arrest or vasodilatation on the carotid body, the signs of asphyxia and the injuries on the neck may be slight or absent'*. As opined by Jaisingh P. Modi in the celebrated text **Modi's Medical Jurisprudence and Toxicology** (22nd Edn. page 263): *'In some cases the mark in the neck may not be present at all, or*

may be very slight, if the ligature used is soft and yielding like a stocking or scarf, and if it is removed soon after death’.

21. As noted herein above in para 3 the mouth of the deceased was open with tongue protruding out. One symptom of strangulation is mouth open and tongue protruding out. Thus, we have some evidence that there is a likelihood of Bilkis being strangled.

22. Now, there are only two possibilities of Bilkis dying. The first is that her death was natural and the second it was homicidal. This deadlock has to be broken with reference to the fact that the appellant was found absconding from his house; the door of the house (a single room tenement) was locked from outside and the key of the lock was recovered at the instance of the appellant. That the dead body of Bilkis was inside the room which was found locked means that before the door was closed and the lock was put, dead body of Bilkis was already inside the room. He who closed the door and put the lock was obviously aware that Bilkis had died. Had Bilkis died a natural death, the conduct of the husband would be to inform the relatives and perform the last rites of his wife and not run away. The conduct of the appellant running away after closing the door and locking the same with the dead body of Bilkis inside is suggestive of his guilt.

23. The appellant cannot take advantage of the fact that since dead body of Bilkis was detected after a few days of her death and had decomposed and hence either due to said reason or due to soft ligature material used to strangle Bilkis, forensic evidence was lost.

24. We break the impasse on the cause of death of Bilkis on the anvil of the conduct of the appellant and as discussed hereinabove.

25. We conclude by recording our concurrence with the view taken by the learned Trial Judge.

26. The appeal is dismissed.

27. Since the appellant is still 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
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