

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

% Date of Decision : 19th March, 2010

+ **Crl.A.No.3/2008**

RAJESH KUMAR Appellant
Through: Ms.Shraddha Bhargava,
Advocate

versus

STATE Respondent
Through: Mr.M.N.Dudeja,APP

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? Yes
3. Whether the judgment should be reported in the Digest?Yes

PRADEEP NANDRAJOG, J. (Oral)

1. Believing the testimony of Smt.Dhulli PW-1, Gaje Singh PW-2, Babita PW-3 and Kanta PW-4, the learned trial Judge has convicted the appellant for the offence of having murdered his wife as also for the offence punishable 498-A IPC. For the offence of murder, the appellant has been sentenced to undergo imprisonment for life and for the offence punishable under Section 498-A IPC, the appellant has been sentenced to undergo imprisonment for a period of two years.

2. When the incriminating circumstances were put to the appellant he sang the song "*It is incorrect*" or "*It is wrong*".

3. The only thing which was admitted by the appellant was that the deceased was his wife.

4. The unfortunate date was 07.09.2005. As deposed to by Dhulli PW-1 and other three witnesses i.e. Gaje Singh, nephew of Dhulli, Babita sister of the deceased and Kanta PW-4, the cousin of the deceased, a telephone call was made by Amarjeet PW-12, the brother of the appellant informing Smt.Dhulli that the appellant was beating her daughter Kavita.

5. All four persons, namely, Dhulli, Gaje Singh, Babita and Kanta proceeded to the matrimonial house of Kavita and saw that the appellant, had by that time they reached the house of the deceased, picked up a Belan and was hitting Kavita as also striking her against the floor. Kavita was crying and bleeding. As deposed to by all four witnesses they requested appellant to take his wife to the hospital. They accompanied the appellant to the hospital where Kavita was declared brought dead. As deposed to by all four, on learning that his wife had died the appellant fled from the hospital.

6. It may be noted at the outset that the deceased belongs to a humble background evidenced by the fact that her mother Dhulli is a Safai Karamchari with the MCD. Thus, the narratives of the incident by the four witnesses has to be evaluated, vis-à-vis the credibility of the four persons, keeping

in view the humble socio-economic background to which they belong.

7. That even in the past the appellant had been indulging in wife bashing is proved through the testimony of SI Ramesh Kalsan PW-10 and the record of proceedings Ex.PW-10/A and orders passed by the learned Sub Division Magistrate on various dates being Ex.PW-10/B to Ex.PW-10/D. As also the MLC Ex.PW-10/E of the appellant drawn on 06.06.2004. The same relates to proceedings under Section 107/151 Cr.P.C. as per which it stands recorded that on 06.06.2004, under influence of alcohol, the appellant has severely beaten his wife Kavita. Kavita's statement Ex.PW-10H has been proved by SI Ramesh Kalsan which shows the atrocities committed by the appellant on his wife.

8. That Smt.Dhulli was with her daughter, as claimed by her, is proved by the fact that her statement Ex.PW-1/A i.e. her statement on which FIR has been registered was recorded by the Investigating Officer who proceeded to RML hospital on learning about Kavita being badly beaten by her husband and removed to the said hospital.

9. Having perused the testimony of Dhulli, Gaje Singh, Babita and Kanta, we find no blemish in their testimony. All four have corroborated each other.

10. It is urged by learned counsel for the appellant that Amarjeet PW-12 had denied having rung up Dhulli and, therefore claim of Dhulli to be going to the matrimonial house of her daughter and the claim of other three witnesses of accompanying Dhulli is false.

11. We note that Dhulli has stated that she went to the matrimonial house of her daughter when Amarjeet, her other son-in-law and the brother of the appellant, rang up and informed that his brother was beating his wife. We find that Dhulli has not been cross-examined with reference to the said assertion made by her. It is apparent that Amarjeet is now trying to shield his brother i.e. the appellant.

12. It is then urged, that it is not possible for the appellant to continue to beat his wife for so long a period as claimed by Dhulli. It is urged that as per Dhulli, the telephone call made by Amarjeet was received in the house of Kanta PW-4, niece of Dhulli, and they left for the matrimonial house of Kavita. It is pointed out that as per testimony of Dhulli the telephone call was received at around 5:30 PM and all reached the matrimonial house of Kavita at around 6:45 PM.

13. Now, it is possible that when Amarjeet rang up Kanta, quarrel may have just commenced and yet to assume alarming proportions. Amarjeet ringing up his mother-in-law at

the threshold of a quarrel before it assumed alarming proportion has to be viewed with reference to the 107/151 Cr.P.C. proceedings involving the appellant in the month of June, 2004 requiring him to be bound down to desist from such activity.

14. We are not inclined to disbelieve the testimony of PW-1 to PW-4 merely because Amarjeet informed about appellant beating his wife at 5:30 PM and the family members of the deceased reaching her matrimonial house at 6:30 PM

15. No blemish whatsoever has been pointed out to us in the testimony of four witnesses.

16. That the deceased was assaulted for a reason except to teach her a lesson is evidenced by the fact that from the scene of the crime not only the blood of the deceased but even blood stained hair of the deceased was picked up. There was no robbery. Nothing was stolen from the house.

17. The photographs taken of the scene of the crime show that Kavita ran helter skelter all over the room and was chased by the appellant.

18. A last submission urged needs to be noted. Learned counsel for the appellant urges that the appellant has simply used a Belan i.e. an implement used for making chapatis and thus the offence made out against the appellant

is of culpable homicide not amounting to murder.

19. The post-mortem report Ex.PW-15/A of the deceased shows multiple injuries with a blunt object, all of which are attracted towards the scalp, her face and her forehead. It is apparent that the appellant was repeatedly attracted the head of his wife. Indeed death was due to brain hemorrhage.

20. He who repeatedly hits his wife on the head with a Belan would certainly be attributed knowledge of knowing that his acts would result in the death of the victim and death being a near probability, and not death being the likelihood of his acts.

21. We agree with the view taken by the learned trial Judge that the appellant is guilty of having murdered his wife.

22. Appeal is dismissed.

23. Since 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, J

SURESH KAIT, J

MARCH 19, 2010
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