

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

% *Date of Decision :30th April, 2010*

+ **Crl. A. No. 1029/2008**

SUKEN MANDAL Appellant
Through: Mr. Ajay Verma with
Mr.Gurav Bhattacharya,
Advocates

versus

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

PRADEEP NANDRAJOG, J.(Oral)

1. Vide impugned judgment and order dated 07.05.2005, the appellant has been convicted for the offence of having murdered his wife Ms.Alpana Goswami in the intervening night of 14th and 15th May, 2003 at her matrimonial house RZ B-192, Gali No.16, Tuglakabad Extension.

2. The reasoning of the learned trial Judge has to be found in paragraphs 25 and 26 of the impugned decision which read as under:-

"25. I have gone through the entire record including the evidence adduced oral and documentary on behalf of the prosecution and heard Id.APP for the state and Id.Amicus Curiae for the accused with patience at length. In this case there is no direct evidence of any eye witness. The case is based on circumstantial evidence. There is evidence of frequent quarrel between the accused and the deceased on account of keeping two sons of deceased namely Sibas Goswami and Gadhadhar Goswami with the deceased besides the last seen evidence of PW-5 and PW6. PW5 Sibas Goswami deposed consistently as per the prosecution case and he has proved the fact that the deceased was living with accused as his wife and the accused was living with her as her second husband. Accused used to quarrel with her and he did not want that PW5 Sibas Goswami and PW6 Gadhadhar Goswami to live with them who are sons of previous husband of the deceased. On the previous day of the incident on 14.05.03 both PW5 and PW6 had left the deceased in the company of accused and they left them quarreling on the same ground. When they returned in the morning they found the accused missing from the house and their mother was lying dead in the pool of blood having the throat cut injury on her neck. Although both the witnesses have been cross-examined at length but their testimony could not be impeached on any point. Minor variations and contradictions on minor points are immaterial. These both the witnesses have deposed consistently on the main points. Therefore the previous quarrel and also quarrel immediately before the occurrence and last seen has been proved beyond all reasonable doubt.

PW5 and PW6 are natural witnesses, there is no reason to disbelieve them. There is further evidence against the accused that he was found missing from the house and he was later on arrested. Therefore, the adverse inference can be drawn against the accused. There is no explanation in this regard on behalf of accused. Another evidence against the accused is his disclosure statement Ex.PW5/G in which he has conceded his involvement in the crime and also disclosed about the place where he has concealed the gandasa i.e. weapon of offence used in committing crime and the blood stained shirt which he was wearing at the time of commission of offence. Another evidence is pointing out memo cum seizure memo Ex.PW-2/B according to which consequent to disclosure statement accused got recovered the weapon of offence i.e. Gandasa and blood stained shirt. The fact of disclosure statement, pointing out and recovery and sending of the gandasa, shirt and other exhibits for testing of CFSL is proved by the other police officials and PW-5 and PW7 including both the IO's of the case. Nothing contrary could be extracted from the cross-examination of these witnesses.

26. Further there is evidence of CFSL examination vide report Ex.PW-14/D, Ex.PW-14/E as per which the human blood was detected on the shirt of the accused as well as on the gandasa of A Group which belonged to deceased. By this evidence the presence and involvement and possession of weapon of offence with accused is fully established beyond all reasonable doubt. Further the medical evidence of PW-1 Dr.Sunil Kumar Sharma has removed all doubts regarding the death and cause of death of the deceased by cutting

her throat with sharp edge weapon and as per his opinion the cause of death found due to cut of throat injury caused by sharp edged weapon which was sufficient to cause death. The gandasa was sharp edged and dangerous weapon. Therefore, the death in this case of deceased was not accidental or natural but by the weapon of offence recovered in this case, at the instance of accused. No plausible plea has been raised in the defence which can be entertained to suggest the innocence of the accused. All the circumstances have completed the chain of circumstantial evidence leaving no ground for doubt. Therefore I am able to hold safely that the prosecution has succeeded to prove its case against the accused beyond all reasonable doubt and the accused is found guilty of committing the murder of deceased Alpana Goswami by slitting her throat with gandasa i.e. weapon of offence with full intention to cause her death and having motive in his mind to get rid of two sons of deceased as well as deceased when deceased did not agree to send back her two sons. There nothing has come on record to suggest the involvement of any other person except the accused. Therefore this is only the accused who is responsible for commission of murder of deceased Alpana Goswami. Every link points out towards his guilt and none towards his innocence. Therefore accused is held guilty and convicted under Section 302 IPC."

3. It is apparent that the appellant has been convicted on the testimony of his step-sons Sibas Goswami PW-5 and Gadhahar Goswami PW-6, who have proved that the appellant was with the deceased during the intervening

night on 14th and 15th May, 2003. That the appellant and the deceased had quarreled. The two step-sons had gone to work for night duty and when they returned the next morning, they found their mother dead, with her throat cut. That the appellant absconded and was not to be seen by them till he was apprehended. Further incriminating evidence is the recovery of the Gandasa i.e. the weapon of offence on which human blood of the same group as that of the deceased was detected; the Gandasa being got recovered by the appellant after he was arrested and made the disclosure statement Ex.PW-5/G as also the fact that a shirt which he got recovered was detected with human blood of the same group as that of the deceased and said shirt was worn by him when he committed the crime.

4. Suffice would it be to state that where a husband is found absconding from his house and his wife is found murdered and there is further evidence that the two were together, unless the husband explains as to when he parted company with his wife, guilt is plain upon such a husband.

5. That the deceased was murdered in her matrimonial house stands reported to the police when DD No.7-A, Ex.PW-7/A, was recorded at PS Okhla Industrial Area at 9:19 AM on 15.05.2003 that the Police Control Room has informed that in House No. RZ B-192, Gali No.16, Tuglakabad

Extension a murder has been committed and children are crying.

6. SI R.Y.Pandey PW-7 to whom copy of DD No.7-A was handed over for investigation proceeded for the spot, as deposed to by him, in the company of Ct.Bhumesh and Ct.Dharmender. He reached House No. RZ B-192, Gali No.16, Tuglakabad Extension and on the first floor thereof found the dead body of a lady. He learnt that her name was Alpana Goswami. He met two boys named Sibas Goswami and Gadhadhar Goswami who introduced themselves as the sons of the deceased. He recorded the statement Ex.PW-5/A of Sibas Goswami and made an endorsement Ex.PW-7/B beneath the statement and got FIR registered for the offence of murder.

7. Since it was a case of murder, the SHO of the Police Station Inspector Raj Kumar Khatana PW-14 took over further investigation and as deposed to by him, summoned the crime team. He seized the dead body and filled up inquest papers Ex.PW-14/A and sent the dead body for post-mortem to the mortuary of AIIMS. As deposed to by him and as deposed to by Sibas Goswami, various blood stained articles were seized from the place of the crime; blood stained concrete from the floor was taken as also blood was lifted on a piece of cotton as entered in the memo Ex.PW-5/B. On the pointing out

of both sons of the deceased, site plan Ex.PW-14/B was prepared.

8. Dr.Sunil Kumar Sharma PW-1 conducted the post-mortem on the dead body of the deceased on 17.05.2003 and prepared the post-mortem report Ex.PW-1/A which records a deep incised wound over the anterior upper neck above the level of the hyoid cartilage of the deceased and that the neck muscles were cut as also the carotid artery and the left jugular vein. The trachea and esophagus were also cut.

9. Needless to state, cause of death opined was shock, upon the neck being cut and the injury was opined to be sufficient to cause death. The clothes of the deceased as also the blood in gauze piece were got sealed and handed over to the investigating officer.

10. Sibas Goswami and his brother Gadhadhar Goswami deposed in sync and stated that they were residing with the appellant who was their step-father in House No. RZ B-192, Gali No.16, Tuglakabad Extension and that the deceased Alpana Goswami, their mother, had married the appellant three years' prior. The two used to quarrel as the appellant did not want the two brothers to live with him. They used to work on a stitching machine at Tuglakabad Extension and on 14.05.2003 had left for night duty at about 6:00 PM. Their parents were in the house. They were quarreling. They

returned back next day morning i.e. on 15.05.2003 at 8:30 AM and found the door of their house closed. As they opened the door, they were horrified to see their mother in a pool of blood on a bed sheet. They saw that her neck was cut. The appellant was missing. Sibas Goswami made telephone call to the police. The police came. His statement Ex.PW-5/A was recorded and that thereafter the police lifted various blood stained articles from their house in respect whereof memo Ex.PW-5/B was prepared.

11. Sibas Goswami further deposed that his father was arrested 09.10.2003 from CCI Picket and upon interrogation made the disclosure statement Ex.PW-5/G admitting to the crime and volunteering to get recovered the blood stained shirt which he was wearing when he committed the crime as also Gandasa used as a weapon of offence. Thereafter, he led the investigation officer to the Tuglakabad Fort and from a place, concealed in bushes, got recovered the shirt Ex.P-2 and the Gandasa Ex.P-1. He further deposed that the shirt Ex.P-2 was the one which the appellant was wearing on 14.05.2003.

12. Sibas Goswami has been cross-examined in a most cryptic manner. We reproduce the entire cross-examination which reads as under:-

"Earlier I used to live in Calcutta Raghunath Pul School Bari, District Noth 24th Paragana. West Bengal along with my mother. It is my resident in Nadia District West Bengal. My real father used to do tea business in Calcutta. My father is still alive and is doing the same business. There was dispute between my mother and step father accused present in court but we did not make any complaint against my step father in any P.S. in Delhi because I was child at that time. My mother also used to do services in private factory in Delhi since coming to Delhi from Calcutta. I do not know about the factory in which my mother was working. Nobody used to come in our house. It is wrong to suggest that my mother is of bad character. It is wrong that she was having illegal relation with some other persons in Delhi and so she left her alive husband in Calcutta and the persons with whom she has illegal relation in Delhi murdered her. It is wrong to suggest that accused has been falsely implicated in this case."

13. Suffice would it be to state that the testimony of Sibas Goswami that the appellant was his step-father; that the appellant, his mother, his brother and himself were residing in house No. RZ B-192, Gali No.16, Tuglakabad Extension and that when Sibas Gowasmi and his brother left for night duty on 14.05.2003 at 6:30 PM, the appellant and their mother were the only two persons left in the house and that the appellant was absconding next day morning, have not even been challenged.

14. Similar is the position when we look at the cross-examination of Gadhadhar Goswami PW-6.

15. Thus, it has to be held that the prosecution has successfully established that the appellant was the second husband of the deceased and the two were residing on the first floor of house No. RZ B-192, Gali No.16, Tuglakabad Extension where the two sons of the deceased born to her through her previous husband were also residing. The appellant was with the deceased in the evening of 14.05.2003 when the two sons of the deceased left for night duty and was found absconding from his house next day morning when dead body of deceased was first noted. The prosecution has further successfully established through the testimony of the Sibas Goswami that his father was apprehended on 09.10.2003 and remained absconding and out of sight. The said fact of absconding has also been proved through the testimony of PW-7 and PW-14, the two police officers associated with the investigation.

16. When examined under Section 313 Cr.P.C. the appellant denied that the deceased was his wife. He denied having resided with her in house No. RZ B-192, Gali No.16, Tuglakabad Extension. Both denials are false and therefore supply further incriminating evidence against the appellant.

17. The CFSL report Ex.PW-14/D establishes that on the Gandasa Ex.P-1 and the shirt Ex.P-2, which were got

recovered by the appellant pursuant to his disclosure statement, human blood of the same group as that of the deceased was detected. Sibas Goswami has proved that the shirt Ex.P-2 was the one which the appellant was wearing in the evening of 14.05.2003. The appellant has not explained as to how the said shirt got stained with human blood of the same group as that of his wife. Looking at the post-mortem report, it can hardly be urged that the act of cutting the neck of a person till the trachea and the esophagus would not attract the intention to cause the death of the person.

18. We conclude by according our concurrence with the view taken by the learned trial Judge.

19. Noting that the sentence imposed upon the appellant is to undergo imprisonment for life, we dismiss the appeal.

20. Since the appellant is in Jail a copy of this order be sent to the Superintendent Central Jail Tihar for being supplied to the appellant.

PRADEEP NANDRAJOG, J

SURESH KAIT, J

APRIL 30, 2010
'nks'