

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

**RESERVED ON: 21.07.2011**  
**PRONOUNCED ON: 23.08.2011**

+ CRL.A. 949/2001

THOMAS PARKER ..... Appellant  
Through: Mr. Mukul Sharma, Advocate.

versus

STATE ..... Respondent  
Through: Mr. Jaideep Malik, APP.

**CORAM:**  
**MR. JUSTICE S. RAVINDRA BHAT**  
**MR. JUSTICE G.P. MITTAL**

- |    |                                                                           |     |
|----|---------------------------------------------------------------------------|-----|
| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not?                                        | YES |
| 3. | Whether the judgment should be reported in the Digest?                    | YES |

**MR. JUSTICE S.RAVINDRA BHAT**  
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1. The Appellant impugns a judgment and order dated 07.04.2001 in S.C. No. 69/1996 by which he was convicted for the offences punishable under Section 302/201 IPC. For the offence under Section 302 IPC, the Appellant was sentenced to undergo life imprisonment and to pay a fine of ₹ 500/-. In default of payment of fine the convict would further undergo rigorous imprisonment for three months. For the offence under Section 201 IPC, the Appellant was sentenced to undergo Rigorous Imprisonment for one year and to pay a fine of ₹500/-. In default of payment of fine the convict would further undergo rigorous imprisonment for three months.

2. The prosecution case in brief is that on 16.01.1994 at about 05:15 PM, Thomas Parker (hereafter referred to as the “Appellant”) went to PS Sarojini Nagar and informed HC Ramesh

Kumar (PW-8) that he had murdered his wife Vasanti (hereafter referred to as the “deceased”) in the night intervening 14/15.01.1996 at his tenanted accommodation, i.e, B-190, Arjun Nagar, Safdarjung Enclave, New Delhi. The Appellant stated that he had tried to dispose of the dead body by wrapping it in gunny bags. DD No. 17A was recorded to this effect PW-8. PW-16 (Insp. R.P. Gautam), PW-10 (Ct. Jagbir Singh), other police men and the Appellant went to the tenanted accommodation, at Arjun Nagar. PW-1 (Vijay Sharma) and PW-2 (Kashmir Singh), two independent witnesses residing in the locality were also joined in the investigation. The Appellant took the police team and PWs-1 and 2 to his room (tenanted room in the premises of PW-4 Gurcharan Kaur), took out a key from his pocket and unlocked the door. On entering the room the Appellant showed a jute bag tied with electric wires; inside which the dead body of a woman was found. The dead body was kept in another jute bag inside the big jute bag in a folded condition (it was tied with ropes) and was emitting foul smell; the two bags were bloodstained. PW-16 prepared a rukka Ex.PW-16/C on the spot and sent it to PS Sarojini Nagar through PW-10; an FIR bearing no. 22/96 was registered by PW-8 at about 09:15 PM under sections 302/201 IPC. Charges were framed against the Appellant for committing offences punishable under Sections 302/201 IPC. The Appellant pleaded not guilty and claimed trial.

3. The prosecution examined 16 witnesses; 6 of whom are material witnesses relied upon by the prosecution. PW-1 and PW-2 are two independent witnesses who were joined during the investigation. PW-4 is the landlady who had seen the Appellant with two persons one day prior to the recovery of the dead body, PW-6 is the witness who had gone to the Appellant’s house on 15.01.1996 and had seen the dead body of the deceased, PW-8 is the constable who had recorded DD No.17A and PW-16 is the IO of the case.

4. PW-1 Vijay Kumar, an independent witness residing opposite the PW-4’s house deposed that on 15/16-01-1996, between 05:30 and 07:00 PM, the police, together with the Appellant went to his portion of the house, unlocked his room with the key provided by him. A jute bag was found and from inside the jute bag another jute bag containing a dead body of a female was recovered. He further deposed that the police had told him that a murder had taken place in the house and they wanted to open the door in his presence. PW-1 deposed that a photographer was present at the spot but stated that no photographs were taken in his presence. In his cross-examination, the witness admitted that he was not able to remember the name of the police officer who unlocked the door of the Appellant’s room with the help of the key given by

the Appellant. He stated that he had seen only one photographer at the spot. He admitted that he was present at the spot along with the police officials for about 30-45 minutes and the body was recovered in his presence and was taken out of the jute bag. He admitted that the seizure memo of the jute bag, tie, talcum powder, lock and electric wire was prepared in his presence and he signed the same. He further admitted that he could not remember from where the Appellant took out the key and handed it over to the police; he did not remember what clothes the Appellant was wearing at that time. He denied that the proceedings had been conducted on 16.01.1996 as PW-4 had complained of foul smell. He also denied the suggestion that the Appellant had been brought to the spot on 17.01.1996 just to be photographed at the spot and no recoveries were made at his instance.

5. PW-2 Kashmir Singh (the second independent witness) resident of house no. 193 Arjun Nagar deposed that on 16.01.1996 at about 08:30/9:00PM while he was at home watching T.V. his wife informed him that a South Indian had committed the murder of his wife; he went out of the house and saw that a lot of people had gathered at the spot. He stated that upon reaching the door of the Appellant's room, it had already been unlocked and he (PW-2) saw a dead body of a female in a folded position; he was not able to stay there for long as the body was emitting foul smell. The prosecution declared this witness hostile as he was not supporting its version with regard to him being a witness to the room being opened with the help of the key given by the Appellant. PW-2 in his cross-examination admitted that along with him, another independent witness PW-1 and a photographer were also present. He denied that the door was opened by the Appellant in his presence; he states that he did not notice how or by whom the door was opened as at that time he was keen to see the dead body. He admitted that the Appellant was being interrogated by the police but denied that he made any statement regarding his involvement in the murder. He admitted that the photographer present at the spot had taken photographs of the crime scene but he did not remember the number of photographs taken. Further in his cross-examination, PW-2 testified that he was unable to tell who had taken out the dead body from the jute bag as that was not done in his presence; he was present in the house only for about a minute as he could not tolerate the foul smell from the body. He further testified that the police officials (about 7-8) stayed at the scene till 11:00 PM. PW-2 denied the suggestion that the photographs had been taken on 17.01.1996 and not on 16.01.1996.

6. PW-4 Gurcharan Kaur, the land lady of the tenanted room where the deceased and the Appellant were residing deposed that she had a shop in Sarojini Nagar and used to leave her house with her daughter in the morning and would return at about 08:00 PM from the shop. She further deposed that one day in the month of January 1996 she returned home early from the shop as she felt unwell and at about 07:00 PM the police brought the Appellant to her house and upon her asking him, he told her about his killing his wife (she first asked the police as to what had happened and on their suggestion she had enquired from the Appellant). She confronted the Appellant as to why he had told her earlier that his wife went to her sister's house after fighting with him over a job. She testified that a day prior to the discovery of the dead body, i.e., 15.01.1996 two persons had gone with the Appellant at about 08:30/9 PM; the Appellant had told her that they were from his office. She deposed that she had seen the two persons when they were coming downstairs as at that time she was sitting in the *verandah*. She had remarked to the Appellant that one of the two persons resembled him and it is then that the Appellant told her that he (one of the two persons) was in fact his brother. She testified that she had not seen the deceased for about 3/4 days prior to the day when the Appellant had come with the two boys. She further deposed that she did not see the Appellant quarrelling with the deceased during the three months they stayed at her house. She did not know if the deceased used to be at home alone during the day since she would be in her shop till evening.

7. PW-6 Raja (one of the two persons who had visited the Appellant's house on 15.01.1996) deposed that on 15.01.1996 he and Raju (the Appellant's brother) were present at a barber's shop in Munirka. At that time the Appellant went to the shop and asked Raju and him (PW-6) to accompany him (the Appellant) to his house in Arjun Nagar. He further deposed that he saw the dead body of the Appellant's wife in his house. The Appellant asked them (Raju and PW-6) what he should do with the dead body upon which PW-6 advised him to go to the police. He testified that the landlady (PW-4) had seen him with the Appellant. This witness supported the prosecution story only half way, he is the witness in whom the Appellant had supposedly confided in regarding his role in the death of the deceased. The witness however denied having told the police that the Appellant had told him that he had killed his wife.

8. In cross examination, PW-6 admitted to his having gone to the Appellant's house on his (the Appellant's) two-wheeler. He testified that he had not seen the landlady but was told by the IO in the police station that the landlady had seen them (the Appellant, PW-6 and Raju).

He further admitted that the SHO had asked him to refresh his memory before entering the witness box; he did so by reading the police statement. He denies the suggestion that he had not gone to the house of the Appellant on 15.01.1996 and that he had not seen the dead body of the deceased in the Appellants house.

9. PW-8, HC Ramesh Kumar deposed that on 16.01.1996 he was posted as duty officer in PS Sarojini Nagar from 05:00 PM to 01:00 AM; at about 05:15 PM the Appellant went to the police station and made a statement which was recorded by him (PW-8). The Appellant stated that he was married to the deceased on 13.04.1993 and differences started between them about one and a half years back regarding her job and *"day to day satisfaction of life"*. The Appellant further stated that on the night of 14/15.01.1996, between 12:00 to 01:00 PM, some heated argument took place between the two of them which led to abuses whereupon the Appellant strangled his wife (the deceased). PW-8 further claims that the Appellant told him that he (the Appellant) tried to dispose of the deceased's body by packing it in gunny bags but later changed his plan and came to his senses; he therefore came to surrender himself. PW-8 deposed that the statement made by the Appellant was recorded as DD No.17A, Ex.PW-8/A and was signed by the Appellant. PW-8 further deposed that a copy of DD No. 17A was given to SI Raghubir Singh and he along with PW-10 (Ct. Jagbir Singh) and the Appellant left for the spot. He further testified that at about 09:15 PM on the basis of a rukka sent by PW-16, he (PW-8) registered the FIR bearing no. 22/96; he sent the FIR through PW-14 (Ct. Pirthvi Singh) to the concerned senior officers and the Magistrate.

10. PW-8, in his cross-examination admitted that the Appellant had gone alone to the police station and that DD No.17A was written after recording the statement of the Appellant; he did not inform the senior officers before writing the DD entry. PW-8 also admitted that he was alone in the reporting room when the DD was being recorded and that PW-16 was not present in the police station. He further admitted that SI Raghubir Singh (to whom the copy of the DD had been given) left the police station with the Appellant. PW-8 denied that the Appellant had never made a statement to him and that the FIR was recorded at the instance of the SHO.

11. PW-16, SHO R.P. Gautam deposed that on 16.01.1996 on receipt of DD No. 17A he along with SI Raghubir Singh, Ct. Jagbir Singh (PW-10) and other staff members went to the spot. He testified that he joined two independent witnesses (PW-1 Vijay Kumar Sharma and PW-2 Kashmir Singh) from the locality in the investigation and got the spot photographed. He further

deposed that the Appellant went to the first floor of the house and took out keys from his pocket and unlocked the room in presence of the police party and the witnesses. He further testified that a jute bag tied with electric wire was found inside the room and on opening it one dead body of a female emitting foul smell was found; the body was tied with ropes and the jute bag was blood stained. PW-16 deposed that he sent information regarding the incident to the SDM through PW-10. He took into possession the lock and key, one Ponds Dream flower talc powder (which was used on the body), a neck tie, electric wire and two jute bags.

12. PW-16 in his cross examination stated that at the time when DD No.17A was recorded he was in the police station and reached the spot along with SI Raghubir Singh, Ct. Jagbir Singh at about 06:15/06:20 PM. He admitted that he had called a private photographer, Sudesh Kumar before entering the house but he clarifies that by the time they reached the front door of the room where the dead body was recovered the official photographer had also reached.

13. According to the impugned judgment, by the above 6 witnesses, the prosecution successfully proved that the Appellant and the deceased were residing on the first floor of House No. B-190, Arjun Nagar and that the Appellant had brought two persons i.e. his brother Raju and PW-6 Raja to his house on 15.01.1996 and had shown them the dead body of his wife. It was held that the testimonies of PW-1, 2, 4 and 16 further proved that the dead body of the deceased was discovered on 16.01.1996 from the house of the Appellant on the basis of the information recorded in DD.No. 17A. The dead body of the deceased had talcum powder sprinkled on it; PW-1,2 and 16 have proved the seizure memo wherein a bottle of ponds dream flower talcum powder is seized from the house of the Appellant.

14. The learned *amicus*, Mr. Mukul Sharma, submitted that the prosecution story could not be believed as there were material discrepancies in the testimonies of the witnesses relied upon by them. It was urged that there is a vital discrepancy regarding the time at which the police reached the spot on 16.01.1996. As per the testimony of PW-1 the police went with the Appellant to the spot between 05:30 and 07:00 PM. PW-2 stated that the police reached the spot at about 08:30/09:00 PM, PW-4 deposed that the police went to the premises along with the Appellant at about 07:00 PM and PW-16 deposed that he along with other staff members and the Appellant reached the spot at about 06:15/06:20 PM. The *rukka* in the case was sent at 09:00 PM. These variations fatally undermined the prosecution story.

15. Counsel next relied on the testimonies of PW-5 and PW-16. PW-5 the official photographer of the Crime Branch deposed that he was called by the IO at about 10:00 PM to photograph the scene of occurrence. He further deposed that the lock was opened in his presence and he took 13 photographs in total; no other photographer was present at the spot. PW-16 has stated in his deposition that a private photographer i.e. Sudesh Kumar was called to take photographs and later the official photographer reached the spot. Counsel for the Appellant urged that the discrepancy regarding the presence of the number of photographers is a material discrepancy. Further PW-5 deposed having reached the spot at 10:00 PM and that he was present when the lock was opened. However according to the other witnesses the lock was opened much earlier; according to the prosecution the lock was opened at 06:15/06:20 PM. These testimonies improbabilized the prosecution version.

16. Counsel argued that the private photographer Sudesh Kumar was not examined in this case and the IO was not able to explain how there were 16 photographs on record when PW-5 admittedly has taken only 13 photographs. Counsel urged that having regard to the above circumstances, the photographs showing the lock being opened cannot be relied upon, as they were a product of manipulation.

17. It was next urged that the testimonies of the so called eye witnesses could not be relied on, because of the vital discrepancy in the time, the absence of any mention about the recovery of the key (for the Appellant's premises) or even any mention about it, pursuant to the search conducted on him, after he allegedly confessed his crime to the police. These were vital and went into the root of the matter, discrediting the prosecution version altogether. So far as other witnesses were concerned, the extra judicial confession supposedly made to PW-6 and PW-4 could not be relied on. Counsel submitted that PW-6 had not supported the prosecution version, and therefore, his testimony could not be relied on. It was lastly urged that the most important element, i.e the so-called recovery of the dead body, could not be believed, since the omission to secure the key, when the statement was made by the Appellant, cast a cloud of suspicion on the prosecution story. It was argued that no part of a first information report lodged by the accused with the police could be admitted into evidence if it was in the nature of the confessional statement; reliance was placed on the decision in *Aghnoo Nagesia v. State of Bihar*, AIR 1966 SC 119.

18. The above discussion would reveal that the prosecution relied primarily on the recovery of the dead body, pursuant to the statement made by the Appellant, to the police at P.S Sarojini Nagar. The first question is whether the two public witnesses who deposed to the recovery, can be believed. PW-1 mentioned about the room door being opened by the Appellant, with a key which he took out, the discovery of the dead body in gunny bags, etc. He fixed the time when he was approached as 7 PM. PW-2 did not fully support the prosecution story about being a witness to the recovery of the dead body. Yet, he deposed – in his examination in chief, about going to the room and returning home, soon thereafter, as the body was emitting foul smell. His evidence therefore, is not of much assistance. PW-4 the land lady deposed that on 07:00 PM the police brought the Appellant to her house and upon her asking him, he told her about his killing his wife. These testimonies, particularly the testimony of PW-1, establish that the police visited the premises on 16-1-1994, with the Appellant; he also deposed that the door was unlocked with a key, taken out by the Appellant. The time given by this witness (PW-1) is about 7:00 PM. The discrepancy highlighted by the *amicus* is regarding the difference in time deposed to by PW-1 and PW-4 on the one hand, and PW-2 and PW-5 on the other; they mention a later time; the *rukka*, however was sent at 09:00 PM. No doubt, the materials on record do reflect differing versions about the time when the Appellant was taken to the premises, pursuant to his confessional statement. However, the Court has to be alive to the fact that the *rukka* in this case – Ex. PW-16/C DD No. 17-A was recorded at 09:00 PM. Having regard to the totality of circumstances, there is in fact no material discrepancy which undermines the prosecution story, because PW-1's deposition about the police visit, at 07:00 PM, being associated with the search in the premises, and the recovery of the dead body, does not undermine the deposition of PW-2 or the *rukka*. This Court notices that PW-16's version about having reached the spot at 6:20 PM was not given much importance in the impugned judgment itself. The question is how much weight should the Court attach to the deposition of PW-5? No doubt, he deposed having gone to the spot at 10:00 PM that night, and having photographed the scene of occurrence. There is considerable discussion in the impugned judgment about the discrepancy, highlighted as a serious, if not fatal one, so as to result in the Appellant's acquittal in these proceedings. Yet, this variation in the time – deposed to by various witnesses, in this Court's opinion, is not fatal to the essential allegations by the prosecution, about recovery of the dead body. A cumulative reading of the testimonies of PW-1, 2, and 4, as well as Ex. 16/C, in the Court's opinion, sufficiently

establishes that the Appellant led the police to the site, where the room was unlocked, and the body recovered, sometime between 7 and 8:30 PM. The deposition of PW-5 no doubt strikes a discordant note that remains an unexplained factor. Yet, it is insufficient to dislodge the facts which emerge on a reading of the other materials, deposed to by witnesses who were not shown to have any motive to depose against the Appellant.

19. The Trial Court noticed that the prosecution relied on 16 photographs, some of which showed PW-2, which were over and above the photographs said to have been taken by PW-5, and marked as exhibits. The Trial Court also noticed that the prosecution ought to have explained this aspect satisfactorily. Significantly, however, the Court did not attach much importance to this discrepancy and relied on the testimonies of PW-1 and PW-4:

*“..the discrepancy in the evidence relating to photographs also is not such as can disturb the larger picture. PW-1, 2 and 4, who are definitely independent and dispassionate witnesses, have spoken in unison about recovery of the dead body of Vasanti from inside the tenanted room in their presence at the time when the accused was brought to the place by the police. The dead body was not only emitting foul smell, but efforts had been made to reduce the effect of foul smell by sprinkling of talcum powder over the head and the dead body itself had been folded, tightly tied with PVC wire and stuffed into two gunny bags..”*

While hearing an appeal against a conviction order, the High Court no doubt has to consider the evidence in entirety. Yet, equally, it is well settled that unless the view or findings of the Trial Court are utterly implausible, or based on glaring mis-appreciation of evidence, the High Court should be loath to interfere in exercise of appellate review. We do not find any infirmity with the Trial Court's approach in this regard.

20. Another factor which the Court has to keep in mind is that PW-4 stated that a day prior to 16-1-1994, the accused, with two others (including someone who resembled him) had visited the premises. PW-6 claimed to be the Appellant's brother's friend, and stated that on the day prior to 16-1-1994, he went with him (the Appellant) and his brother Raju, and that the Appellant had shown him the dead body of his wife. If these are considered together with the evidence of PW-4 having been told by the Appellant, in the evening of 16<sup>th</sup> January, 1994, that he had killed his wife, (despite PW-6 not supporting the version given by him earlier, in the statement recorded under Section 161, Cr. PC) the prosecution story stands fortified.

21. It is no doubt true that in *Aghnoo Nagesia*, the Supreme Court held that no part of an accused's first information to the police, particularly if it was confessional in nature, would be admissible in evidence against him. However, equally, the same decision informs that:

*"Some of the decided cases took the view that if a part of the report is properly severable from the strict confessional part, then the severable part, could be tendered in evidence. We think that the separability test is misleading, and the entire confessional statement is hit by Section 25, and save and except as provided by Section 27, and save and except the formal part identifying the accused as the maker of the report, no part of it could be tendered in evidence".*

The correct position was clarified again, in *Khatril Hemraj Amulakh v State of Gujarat* 1972 (3) SCC 671, as follows:

*"We may in this connection refer to the case of Aghnoo Nagesia v. State of Bihar, (1966) 1 SCR 134 = (AIR 1966 SC 119) wherein this Court held that no part of a first information report lodged by the accused with the police could be admitted into evidence if it was in the nature of a confessional statement. The statement could, however, be admitted to identify the accused as the maker of the report. The part of the information as related distinctly to the fact discovered in consequence of the information could also be admitted into evidence under Section 27 of the Indian Evidence Act if the other conditions of that section were satisfied."*

This would mean that the "hands off" approach to an accused's confessional statement, would be subject to the same conditions irrespective of where it is embodied, i.e., in the first information (if given by him) or otherwise, during course of the investigation. No special inviolability from looking into it, in terms of Section 27 of the Evidence Act, to the permissible extent, attaches itself if the accused is a first informant, and makes an extra judicial confession when informing about the offence. If this is the correct position, the Court would be within its rights to consider that part of the statement, made by the Appellant, in this case, disclosing his knowledge about the body and where it was kept, leading to its discovery. This was a vital circumstance, which the Trial Court took note of in convicting him. This Court does hold that the approach adopted in the impugned judgment, accords with the correct legal position, and therefore, does not call for interference.

22. For the above reason, this Court is of the opinion that the Trial Court's findings and conviction recorded, are based on a proper and correct analysis of the evidence led before it, and an unexceptionable understanding of law. Consequently the appeal has to fail, and is therefore,

dismissed. Since the Appellant has not presented himself despite summons, (resulting in appointment of an *amicus curiae* to assist the Court) and proceedings were initiated against him under Sections 82/83 of the Criminal Procedure Code, the Registry is directed to transmit the records to the Trial Court with a further direction to ensure that he is secured and made to serve the remainder of his sentence. The Appeal is dismissed, but in the above terms.

**S. RAVINDRA BHAT, J**

**G. P. MITTAL, J**

**AUGUST 23, 2011**