

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

Date of decision: 27.05.2011

+ CRL.A. 420/2011

MANOHAR LAL Appellant
Through: Ms. Charu Verma, Advocate.

versus

STATE OF THE NCT OF DELHI Respondent
Through: Sh. 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 (OPEN COURT)

%

CRL.A. 420/2011, CrI. M. (Bail) 560/2011 in CRL.A. 420/2011

1. The appellant questions the judgment and order of the learned ASJ dated 04.08.2010 whereby he was convicted for offences punishable under Sections 302/307 IPC. He was sentenced to undergo life imprisonment in respect of the offence punishable under Section 302 IPC; for the offence punishable under Section 307, he was directed to undergo imprisonment for a period of five years.

2. Briefly, the prosecution alleged that the appellant attacked his mother-in-law, the deceased Shanti, in the morning of 19.06.2007. The prosecution relied upon the evidence

of PW-2, the appellant's wife (daughter of the deceased). This witness deposed having married the appellant 14 years before the incident and bearing eight children. According to her, the appellant was unemployed and addicted to alcohol. She used to frequently abuse and quarrel with PW-2 as well as the deceased (who used to stay with the couple). The appellant wanted PW-2, his wife, to stop working as domestic help; the latter felt constrained to take-up such employment because of compelling financial reasons, to support a large family and also since the appellant was unemployed. She deposed that on 19.06.2007 at 07.00 am, the appellant had followed her to keep a watch on her when she visited Kothi No. 61, Princess Park, in the course of her employment. She deposed that after finishing the work, when she returned home at 07.30 am, and started to go for her part-time job elsewhere, the appellant tried to restrain her, she remonstrated, as a result of which there was an altercation in which PW-2 used abusive language. When she tried to leave, the appellant picked a vegetable cutting knife from beneath a gas stove and started following her. She started running and entered a corner house. The deceased was also there. PW-2 deposed that the appellant caught hold of the deceased, fell her to the ground, and gave two blows in the stomach, and also injured her on the hand. PW-2 went out of the house and tried to intervene; she also was given knife blows on the left leg, due to which she fell-down and later managed to get-up and run away. The appellant allegedly followed her and reigned blows on her body. She also stated that the police came and removed both the injured, i.e. the deceased, and PW-2, to the hospital; her statement was recorded by the police in the hospital. PW-2 stated that her mother remained in hospital for three days and thereafter she was discharged. Later she suddenly felt some pain in the stomach and had to be taken to the hospital where she expired on 26.06.2007. PW-2's version was corroborated by PW-1 as regards the injuries suffered by the deceased and later being admitted to the hospital.

3. The police on being intimated had reached the spot, arrested the appellant and also recovered the knife which was later produced in Court as Ex. P-1. On the basis of investigations, the appellant was charged with having committed offences punishable under Sections 307/324 IPC; he entered the plea of not guilty and claimed trial. The

prosecution relied on the testimony of 18 witnesses besides exhibits and other materials. On a consideration of these, the Trial Court held that the appellant was guilty.

4. Learned *amicus*, Ms. Charu Verma, appearing on behalf of the appellant urged that the Trial Court fell into grave error in convicting the appellant for the offences punishable under Sections 307 and 302 IPC. According to the counsel, the material in the form of depositions of witnesses and more particularly, the documentary evidence, such as MLC and the Post Mortem Report as well as the further opinion of the Doctor, point to the fact that the accused could have been at worst convicted for the offences punishable under Section 324 and under no circumstances, for the offences he was charged with. It was urged that the appellant is not challenging the findings of fact, i.e. the background and the circumstances whereby the attack upon PW-2 and the deceased took place; their being taken to hospital, the deceased being subsequently discharged and later developing complications, which ultimately led to her death on 26.06.2007. It is urged that a careful reading of the medical evidence clearly established beyond reasonable doubt that the injury which caused the death of the deceased was not the one inflicted by the appellant and that the Doctor was categorical also that the three incised injuries caused by the appellant's attack could not, cumulatively have been the cause for the death. In this case, the MLC of Shanti has been produced and relied upon by the prosecution as PW-12/B. The relevant part of PW-12/B describes an inside wound on the posterior part of the left forearm (2.5 cms); (ii) one upper chest incised wound which was 0.5 cms and another incised wound at the back (0.5 cms) and (iii) a 0.5 m incised wound in the lower abdomen. The MLC significantly did not mention that all or any of the wounds were grievous or dangerous. Shanti, the injured, who later on expired, was also discharged the same day.

5. PW-8, Dr. Abhishek Yadav conducted the Postmortem of the deceased Shanti and proved a report, Ex. PW-8/A. The report, Ex. PW-8/A described the following injuries:

“XXXXXX

XXXXXX

XXXXXX

1. *Stitch wound, 1 cm long, present over left abdomen, 4 cm from midline, 10 cm below end left of umbilicus, obliquely placed. On opening*

the stitches he found incised wound partially healed 0.2 cm breadth and 2 cm in depth.

2. *Bluish black bruise present over front of abdomen more on the right side, 25 cm x 10 cm obliquely placed, upper end was 12 cm below coastal margin and lower end was 5 cm to the left of midline.*

3. *Incised wound partially healed, 0.5 x 0.2 cm, 6 cm below left nipple, 10 cm from midline, vertically placed.*

4. *Brownish black abrasion 2x1 cm, left elbow tip, posterior aspect.*

5. *Incised wound, partially healed, 2x0.2x0.3 cm present over left arm, 8 cm above elbow tip, and 20 cm below shoulder tip, over posterior aspect, obliquely placed.*

6. *Incised wound, partially healed, 0.5x0.2x0.2 cm left forearm, 18 cm below tip of elbow, 6 cm above wrist joint, horizontally placed.*

7. *Incised wound, partially healed, 0.5x0.2x0.2 cm, left back, 20 cm below shoulder tip, 18 cm from mid line, vertically placed.*

XXXXXX

XXXXXX

XXXXXX”

6. PW-8 stated that the cause of death was *septicemic shock* as a complication of antimortem perforation of large intestine.

7. The opinion of the Doctor, PW-8 was sought subsequently, during the course of investigation by PW-18, through a letter (Ex. PW-18/C). The opinion was sought in respect of the following queries which the doctor was asked to answer, and the answer with reference to the weapon of offence, which was handed-over to him. The relevant part of PW-18/C reads as follows:

“XXXXXX

XXXXXX

XXXXXX

1. *Whether the septicemic shock as a complication of antemortem perforation of large intestine has been caused due to the injuries received on 19.06.2007?*

A. *Answer to Query No.1 is that “The septicemic shock as a complication of antemortem perforation of large intestine can be possible caused due to injuries sustained on the alleged date i.e. 19/6/07.*

2. *Which injuries mentioned in the MLC are responsible for the perforation?*

A. *Answer to Query No.2 is that opinion regarding MLC should be asked to the doctor who prepared it and cannot be commented upon. However, Injury No. 2 on page 2 of my post mortem examination report can be responsible for the perforation of the large intestine.*

3. *Whether the above injuries have been caused with the weapon of offence submitted herewith?*

A. *Answer to Query No.3 is that injuries mentioned in my P.M. report, i.e. Injury No. 1, 3, 5, 6 and 7 are possible with the weapon of offence submitted here with.*

After writing, the subsequent opinion in original, along with weapon and covering sealed, and handed over to IO.

XXXXXX XXXXXX XXXXXX”

8. PW-8, after going through the postmortem report and after examining the weapon, gave his written opinion in the following terms:

“XXXXXX XXXXXX XXXXXX

1. *The septicemic shock as a complication of anti mortem perforation of large intestine can be possible due to injuries sustained on alleged dated i.e. 19.6.07.*

2. *He also opined that opinion regarding the MLC should be asked from the concerned doctor and cannot be commented upon. However, injury no. 2 on page 2 of post mortem report can be responsible for the perforation of large intestine.*

3. *Injuries mentioned in his post mortem report, i.e. injury no. 1, 3, 5, 6 & 7 are possible with the weapon of offence submitted i.e. knife.*

XXXXXX XXXXXX XXXXXX”

9. A clarification was sought again by the prosecution in a letter addressed – letter produced as Ex. PW-16/A; the relevant part of the clarification sought through Ex. PW-16/A is as follows:

“XXXXXX XXXXXX XXXXXX

1. *Whether Injury No.2 has been caused with the weapon of offence?*

2. *Whether Injury No.2 is the cumulative result of other injuries?*

3. *What role has been played by other injuries in the death of the deceased?*

4. *Has the death been caused due to cumulative effect of all the injuries?*

XXXXXX

XXXXXX

XXXXXX”

10. By his reply, the doctor clarified in a letter dated 24.08.2007 (Ex. 8/D) as follows:

“XXXXXX

XXXXXX

XXXXXX

1. *Injury no. 2 was caused due to blunt for impact.*

2. *Injury no. 2 is a separate injury and is not a cumulative result of the other injuries mentioned in the post mortem report.*

3. *Rest of the injuries mentioned in the post mortem report are superficial injuries and have no role in causing death either alone or in cumulative effect. Death has been caused as a complication of injury no. 2 which is produced due to blunt force impact.*

XXXXXX

XXXXXX

XXXXXX”

11. It is evident from the above analysis that the doctor had noticed seven wounds and described them in the postmortem report (Ex. PW-8/A). Injury No. 2 – Bluish black bruise present over front of abdomen, more on the posterior side, 25 cm x 10 cm, obliquely placed, upper end, 12 cm below coastal margin lower end 5 cm to left at midline. Initially, in PW-8/B dated 20.07.2007, PW-8 stated that septicemic shock as complication of injuries could have been caused by the perforation of large intestine possible due to the injuries caused on 19.06.2007. He, however, added that an opinion regarding the MLC should be obtained from the concerned doctor and that he could not comment upon the same. He, at the same time, significantly stated that “Injury No. 2 at page 2 of the postmortem report can be responsible for the perforation of large intestine.” In view of this seeming ambiguity, the prosecution sought clarification yet again, by letter, Ex. PW-16/A, on his opinion. This time, he gave a categorical determination that Injury no.2 was caused due to blunt impact and most importantly that “Injury No. 2 is a separate injury and is not a cumulative result of the other injuries mentioned in the postmortem report.”

12. The doctor, PW-8 also supported his written opinion. PW-8/D furthermore stated that rest of the injuries mentioned in the Postmortem report were superficial and had no role in causing the death, alone or cumulatively, and that death was caused as complication of Injury No.2, which was a result of blunt force impact.

13. Strangely, inspite of the above written opinion and clarifications, the Trial Court returned the finding that the appellants were guilty as charged. It is apparent from the following:

“XXXXXX

XXXXXX

XXXXXX

29. *In view the testimony of PW8 Dr. Abhishek Yadav has specifically stated that injury no.2 mentioned above can be responsible for the perforation of large intestine. He has given the opinion after examining the knife. It is crystal clear the due to knife injury the intestine of deceased Shanti had got damaged and the intestinal contents was spilling out of it. The cause of death is septicemic shock as a complication of anti mortem perforation of large intestine. No question has been put to PW8 by Id. defence counsel that PW8 has not given subsequent opinion or that injury no.2 was not sufficient to cause death of Smt. Shanti. Also no suggestion has been put to PW8 that injury no.2 was caused by the knife and that the deceased was suffering from some ailments. So, the post mortem report Ex.PW8/A as well as subsequent opinions Ex.PW8/B and Ex.PW8/D have successfully been proved by the prosecution.*

XXXXXX

XXXXXX

XXXXXX

31. *The weapon used by accused is knife and he has given blow on the chest, arm and back of injured Poonam. PW2 Poonam has stated in her statement Ex.PW2/A that accused laid her on the ground and gave knife blows on her persons and uttered 'aaj mai tujhe jinda nahin chhodunga aur tera khatma karke hi rahunga'. She raised alarm bachao bachao. The the public persons gave danda blow on the head of her husband due to which knife fell on the ground. If the public persons had not given danda blow on his head, he must have also killed PW2 Poonam. So, intention of accused is clear from the above version of PW2. Accused in his statement u/s 313 Cr.PC has taken the plea that some public persons had beaten him and his family including his wife and his mother in law. But there is no complaint lodged by him in this respect with the police. Also if they were beaten by the public persons, as to why his wife deposed against him and not against the public persons. The said public persons must be known to the accused since they might be of his own locality. But he could not tell*

the name of any single public person who gave beatings to them. He has further stated that his wife was fed up from him as she did not like his habit of consuming liquor and she used to quarrel with him and does not want to live with him. No complaint has been lodged by the accused that his wife does not want to live with him. So, the above defence of accused cannot be considered.

32. *In nutshell, PW2 Poonam who is the wife of accused Manohar has assigned the specific role of accused in this case that he gave knife blow on her person as well as on the person of deceased Shanti. There is no reason for PW2 to depose against her husband. Even PW4 Mohan Lal who is brother of accused has stated that he came to know about the incident from Gudiya daughter of Manohar Lal and when he reached in the hospital he found Poonam and Shanti Devi admitted and having injuries by knife blows on their persons. So, the brother of accused has also deposed against him. The dead body of deceased Shanti has been identified by PW4 Mohan Lal. Deceased Shanti Devi has sustained injury on her abdomen as per post mortem report and the injury was 25cm x 10 cm obliquely placed, upper end 12 cm below coastal margin and lower end was 5 cm to the left of mid line. As per the opinion of the doctor she expired due to this injury as her large intestine was perforated and its contents spilled out. The medical evidence corroborate the ocular version of PWS. Each and every witness in this case has given consistent statement. Even the intention of the accused is clear from the version of PW2.*

33. *In view of my above discussions, I am of the view that prosecution has left no stone unturned to prove its case against the accused. I, therefore hold accused Manohar Lal guilty for the commission of offence punishable u/s 302/307 IPC and convict him thereunder.*

XXXXXX

XXXXXX

XXXXXX”

14. The findings of the Trial Court about the guilt of the appellant and his conviction for the offences punishable under Sections 307 and 302 IPC are unsustainable. The earliest document, i.e. MLC of both PW-2 as well as the deceased reveal simple injuries in the nature of superficial (0.5 cm) incised wounds. Undoubtedly, the appellant used a kitchen knife which was subsequently recovered. Further, the injuries were not of such a severe nature as to be life-threatening or cause complications as would have, in the ordinary course of nature, result in death of anyone. The deceased Shanti, according to the categorical evidence and written opinion of PW-8 died on 26.06.2007 – one week

after the attack – as a result of a blunt impact – injury which had nothing to do with the incised wounds inflicted by the appellant on 19.06.2007. A joint reading of Ex. 8/B and 8/D establishes beyond a shadow of doubt that Injury No. 2 was a blunt impact injury, that has not found mention in the MLC of Shanti, Ex. PW-12/B. The prosecution has not shown how Shanti suffered Injury No.2 which did not exist when she was examined on the date of the incident. The prosecution did not allege that the appellant was responsible for the blunt impact injury, which ultimately resulted in Shanti's death. In these circumstances, the findings of the Trial Court are utterly indefensible and have to be set-aside.

15. That brings the Court to discuss that having regard to the facts proved, to consider what is an offence that the appellant is guilty of, having regard to the facts proved, the nature of injuries inflicted, and the medical prognosis in the case of PW-2 as well as the deceased was such that they did not require prolonged treatment or medication; they were discharged immediately and given same course of treatment. The deceased developed complications later, as a result of some other blunt impact injury unconnected with the appellant's actions. No conviction under Section 302 or any Part of 304 IPC is sustainable. Likewise, the conviction of the appellant under Section 320 IPC has not been made-out on the facts. In this regard, conviction under Section 324 appears to be the most appropriate on the facts proved from the record. That provision criminalizes any action whereby the offender voluntarily causes hurt by means of any instrument of shooting, stabbing or cutting. The maximum sentence prescribed in respect of this offence is three years' imprisonment of either description.

16. Having regard to the overall circumstances of the case, including the fact that the appellant has already been in custody right from June 2007 onwards, we are of the opinion that ends of justice would be met with if the sentence is reduced to a period of one year's rigorous imprisonment.

17. We have to part with this case with a disturbing note. The learned ASJ, Sh. Suresh Chand Rajan, who delivered the impugned judgment has disclosed a casual attitude in analyzing the prosecution evidence, and appears to have artistically concluded that the

doctor's (PW-8's) opinion pointed to the cause of death being injury inflicted by the appellant. A careful consideration of the medical evidence and the circumstances made-out by the prosecution establish that the findings are unsupportable either on the facts or in the law, which led to a horrific imposition of life sentence on the appellant for commission of offences that he was not guilty of. The conduct and disposal of this case has shown how, in the haste for quick disposal, justice has been the casualty. We direct the Registrar of this Court to circulate a copy of this judgment to the concerned inspecting Judges, who have to review the service records of Sh. Suresh Chand Rajan, for appropriate action.

18. The appeal is allowed in the above terms; the conviction and sentence are modified in the terms indicated above.

S. RAVINDRA BHAT
(JUDGE)

G.P. MITTAL
(JUDGE)

MAY 27, 2011
'ajk'