

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

% Judgment delivered on 10.10.2011

+ CRL.A. 266/2009

SATYA BHUSHAN JAIN

... Appellant

versus

STATE

... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Dimple Vivek

For the Respondent/State : Mr Sanjay Lao

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE MANMOHAN SINGH

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

BADAR DURREZ AHMED

1. The appellant is aggrieved by the impugned judgment dated 25-02-2009 delivered by the learned Additional Sessions Judge-V, district North-West, Rohini courts, Delhi in Sessions Case No. 100/2008 arising out of FIR no.527/2002 registered at police station Shalimar Bagh under sections 302/328/394/415/120-

B/34 of the Indian penal code. By virtue of the impugned judgement, the appellant Satya Bhushan Jain has been convicted of the offence punishable under section 302/394 IPC. The appellant is also aggrieved by the order on sentence dated 05-03-2009 passed by the learned additional sessions judge whereby the appellant was sentenced to undergo rigorous imprisonment for life with a fine of Rs. 3000/-for the offence under section 302 IPC. In addition, the appellant has also been sentenced to undergo rigorous imprisonment for 10 years and a fine of Rs. 5000/-for the offence under section 394 IPC. In default of the payment of fine, the appellant is required to undergo simple imprisonment for one year. The sentence awarded under section 394 was directed to be counted and set off against the substantive sentence in view of the provisions of section 428 of the code of criminal procedure, 1973.

Background Facts

The background facts as set out in the impugned judgement are as follows:-

2. On 23-08-2002, on receipt of DD no.17 at police post Pitampura, the then ASI Hansraj and Constable Jagbir Singh arrived at the scene of crime at JU-24-B, Pitampura, Delhi where, in the bedroom of the flat at the first floor, the dead body of the deceased Aradhana, wife of Shri Arun Kumar Shukla was found. They observed that the tongue had been caught between the teeth and blood was oozing out from the left wrist near her bangles. There was also blood on the bed sheet as well as on the floor. A telephone wire was wrapped around the neck of the deceased. The deceased was wearing a green sari and she was around 32-33 years of age. The said police officers also noticed three pieces of broken bangles lying there.

3. Thereafter, the crime team was called and the statement exhibit PW5/A of Shri Arun Kumar Shukla, husband of the deceased was recorded. The *ruqqa* exhibit PW 17/A was prepared and sent for registration of the FIR. The investigating officer seized the broken pieces of glass bangles, blood from floor, earth bloodstains, bed sheet, a glass tumbler and a steel tumbler. The dead body was sent for post-mortem examination and the statement of witnesses were recorded.

4. The appellant Satya Bhushan Jain alias Bunty was arrested on 24-08-2002 and his disclosure statement exhibit PW 21/C was recorded. Thereafter the stolen articles namely two gold bangles, one gold chain and Rs. 10,000/-were recovered and seized, allegedly on the disclosure of the appellant. A knife was also allegedly recovered on the pointing out of the appellant. The clothes of the appellant were also seized. It may be pointed out at this juncture that there was a co-accused by the name of Pintoo Kumar alias Vishal Kumar and he was arrested on 25/08/2002 at the instance of the appellant. Certain other stolen articles which included two gold bangles, one gold ring and Rs. 1500/-were allegedly recovered pursuant to the alleged disclosure made by the co-accused Pintoo Kumar alias Vishal Kumar. The fingerprints lifted by the crime team from the scene of crime were sent for analysis to the forensic science laboratory. After the investigation was completed, the chargesheet was filed before the learned at magistrate who committed the case to the Court of sessions.

5. On 16-10-2003, the following charges were framed against the present appellant Satya Bhushan Jain alias Bunty and the co-accused Pintoo Kumar alias Vishal Kumar: –

"that on 23.08.02 time unknown, at flat number J-U/24-B, Pitampura, Delhi within the jurisdiction of PS Shalimar Bagh, you both entered into a criminal conspiracy and in furtherance of criminal conspiracy, you have dishonestly retained stolen property having knowledge to be stolen property and thereby committed an offence punishable u/s 411 r/w Sec.120-B IPC and within the cognizance of this court"

"that on 23.08.02 time unknown, at flat number J-U/24-B, Pitampura, Delhi within the jurisdiction of PS Shalimar Bagh, you both entered into a criminal conspiracy and in furtherance of criminal conspiracy you had committed the robbery upon the person of deceased Anuradha Shukla (sic) (should be Aradhana Shukla) and robbed her of Rs. 10,000/-, four gold bangles and one gold chain and thereby committed an offence punishable u/s 394 r/w s. 120-B IPC and within the cognizance of this court"

"that on 23.08.02 time unknown, at flat number J-U/24-B, Pitampura, Delhi within the jurisdiction of PS Shalimar Bagh, you both entered into a criminal conspiracy and in furtherance of criminal conspiracy, you had administered stupefying drug to Anuradha Shukla (sic) (should be Aradhana Shukla) with the intention to cause hurt upon her person and thereby committed an offence punishable u/s 328 r/w sec. 120-B IPC and within the cognizance of this court"

The appellant was also separately charged of having committed the murder of deceased Aradhana Shukla and thereby having committed an offence punishable under section 302 IPC.

6. Both the accused pleaded not guilty and claimed trial. The prosecution examined as many as 22 witnesses. The statements of the accused were recorded under section 313 CrPC. The appellant wished to lead evidence in defence and consequently the testimonies of DW1 Suresh Kumar and DW2 Subash Jain were

recorded. By virtue of the impugned judgment, the appellant Satya Bhushan Jain was convicted of the offences under sections 302/394 IPC. He was acquitted of the other charges. The co-accused Pintoo Kumar was convicted of the offence under section 411 IPC and acquitted in respect of the charge under sections 120B/328/394. The sentences awarded to the appellant have already been mentioned at the beginning of this judgment. Insofar as co-accused Pintoo Kumar is concerned, he was sentenced to 3 years rigorous imprisonment for the offence under section 411 IPC. In the present appeal we are only concerned with the conviction and sentence of the appellant Satya Bhushan Jain.

The Prosecution Case

7. The prosecution case is that the deceased Aradhana Shukla was married to Shri Arun Kumar Shukla who is an advocate by profession and they had two sons by the name of Naman and Yasharth who were 5½ years old and 4½ years old respectively at the time of the incident. It is the case of the prosecution that on 23-08-2002, at about 7:45 AM Arun Kumar Shukla left both of his sons at the school van about 100-150 m from his house. At 8:15 AM, Arun Kumar Shukla left for work at his chamber at the Tees Hazari courts. At that point of time his wife Aradhana Shukla was well. At about 11:30 AM, the present appellant is alleged to have come to the house of the deceased. She offered him tea. It is alleged that the appellant had procured four sleeping pills from the co-accused Pintoo Kumar. The appellant asked Aradhana Shukla for a glass of water and while she went to get the glass of water, he put 2 pills in her cup of tea. She drank her tea and shortly thereafter she complained of a headache. On this, the appellant gave her the remaining 2 pills as he told her that it would cure her headache. As Aradhana was not feeling well, she went to her bedroom and after sometime became unconscious.

The prosecution case further is that the appellant got a telephone wire and strangled Aradhana with it. Thereafter, he picked the kitchen knife and gave seven (7) cuts on the right wrist of Aradhana. He allegedly, opened the almirah and took Rs. 10,000/- from it. He also removed one gold chain, one gold ring and four gold bangles from her person and went out of the flat.

8. At this juncture, it must be mentioned that according to the prosecution, in the meanwhile, at about 12.15 pm, PW3 Brij Nandan Suman had come to the house looking for Arun Kumar Shukla. He found that the appellant and Aradhana Shukla were having tea in the verandah. When he found that Arun Kumar Shukla was not there, he left. His stay there was about a minute or so.

9. It was around 1 pm when the appellant is alleged to have left the flat. As he was rushing down the stairs he was met by PW4 Naman Shukla who was returning from school. He said *namaste* to the appellant but, the appellant did not respond and went down the stairs. When PW4 Naman Shukla entered the flat he found that the TV set was blaring and his mother was lying “unconscious” and blood was oozing from her body. PW4 Naman Shukla went to the opposite apartment and told the lady (“aunty”) about what he had seen.

10. At about 1.50 pm Arun Kumar Shukla got a call from somebody that something had happened to his wife. As nobody was answering the phone in his flat, he contacted Sunil, a typist who lived in the same building. At about 2.00 pm the said Sunil rang up his flat. The call was answered by one Sushma, another resident of the same building, who told him that something bad had happened. At

about 2.35 pm PW5 Arun Kumar Shukla reached his apartment alongwith his friend H S Ansari.

11. In the meanwhile, at 2.20 pm, DD No.17 (Exhibit PW6/A) had been recorded at Police post Pitampura which indicated that a wireless message had been received to the effect that a lady was lying unconscious at JU Block, H.No. 24B, Pitampura. At 2:30 pm DD 18 (exhibit PW6/B) was recorded at the same police post on receipt of information from PCR that a lady had been murdered at the said address. The crime team arrived at the spot at 3:30 pm. The statement (exhibit PW5/A) of Arun Kumar Shukla was recorded, which formed the basis of the *ruqqa* (exhibit PW17/A) which was sent at 5:30 pm. Which was received at the police station at 5:45 pm vide DD No. 13A dated 23-08-2002. It is relevant to note that in his statement exhibit PW5/A, Arun Kumar Shukla had stated that the crime has been committed by some unknown person and that he does not suspect anyone. The statement (exhibit PW1/DA) of PW4 Naman Shukla was also recorded.

Medical Evidence

12. Let us first of all consider the medical evidence. PW 20 Dr RK Puniya had conducted the post-mortem examination on the dead body of Aradhana on 24-08-2002. Insofar as external injuries and external examination was concerned, the said witness deposed that a black telephone wire was tied around the neck of the deceased with a double fixed knot. After removal of the telephone wire, PW 20 noticed that there were four horizontally placed ligature marks over the front and sides of the neck and were placed below the thyroid cartilage. He noticed that the ligature mark was red and soft and that the margins were not braided and measured

14.9 cm X 0.4 cm each. The said witness further stated that the ligature marks corresponded to the ligature material and that the telephone wire tied around the neck was sufficient to cause ligature strangulation. The said witness also noticed multiple incised wounds which were seven in number present over the left forearm around and on the left wrist joint varying between 1.1 cm X 0.5 cm to 1.7 cm X 0.5 cm of which, five incised wounds were muscle deep and two were skin deep. According to the said witness all the incised wounds were antemortem/perimortem. According to the said witness, in his opinion, the ligature strangulation was antemortem in nature. He further opined that the post-mortem findings were consistent with death due to asphyxia as a result of ligature strangulation which was sufficient to cause death in the ordinary course of nature. The time since the death was approximately 24 to 26 hours prior to autopsy. PW 20 Dr RK Puniya proved the post-mortem report exhibit PW 20/A. After going through the viscera report exhibit PW 18/A, the said witness stated that in his opinion death was due to asphyxia as a result of ligature strangulation which was sufficient to cause death in the ordinary course of nature. It may be pointed out that before the court, a knife exhibit P 18 was shown to him and the said witness stated that the incised wounds on the left forearm of the deceased could be possible by the said knife. It is also pertinent to note that in his cross examination this witness stated that he did not remember whether the said knife had been produced before him at the time he was conducting the post-mortem examination and he acknowledged the fact that in the post-mortem report there is no opinion with regard to the knife.

The FSL Report exhibit PW 18/A

13. Exhibit PW 18/A is the forensic science laboratory report dated 31-08-2004. It is in respect of the following: –

Exhibit 6: One steel glass having brownish deposits inside it.

Exhibit 7: One glass tumbler having brown and black deposits.

Exhibit 8A: Stomach and piece of small intestine with contents kept in a sealed jar.

Exhibit 8B: Pieces of liver, spleen and kidney kept in a sealed jar.

Exhibit 8C: blood sample vol. approx. 15 ml kept in a sealed jar.

The result of the examination was as under: –

"On clinical examination, metallic poisons, ethyl and methyl alcohol, cyanide, phosphide, alkaloids, barbiturates, tranquillizers and insecticides could not be detected in exhibits '6', '7', '8A', '8B' & '8C'."

14. From the post-mortem examination conducted by PW 20 Dr RK Puniya and the forensic science laboratory report exhibit PW 18/A it is established that Aradhana's death was caused by ligature strangulation and the ligature material was the telephone wire tied around her neck. It is also clear that the incised wounds on her left forearm could have possibly been caused by the knife but, the said knife was not the cause of her death. It is also clear that the prosecution case that some pills were given to Aradhana mixed with her tea is not at all established. This is so because no poisons or barbiturates or tranquillizers were detected in the viscera or the blood sample of Aradhana nor could they be detected in the contents of the steel tumbler or the glass tumbler.

Chance Prints

15. Now, let us move on to the evidence regarding chance prints. PW9 SI Rajesh Kumar has testified that he was part of the crime team and that he had arrived at the scene of crime on 23-08-2002 where he found the dead body of a lady. He inspected the place of occurrence and lifted 2 chance prints from a steel tumbler, 2 chance prints from a telephone set and 1 chance print from the telephone “dikki” and that the said chance prints were numbered as Q1 to Q5. He also proved his report exhibit PW9/A. We then have exhibit PW 21/D which is the report from the fingerprint bureau, Delhi Police, Delhi. The result of the examination was as under:-

- "1. Chance print marked Q3 is IDENTICAL with Left Middle Finger marked S1 on the finger impressions slip of Satya Bhushan Jain s/o Subash Chand Jain Accused.
2. Chance print marked Q1, Q2, Q4 and Q5 are partial and smudged and do not disclose sufficient number of ridge details in their relative positions for comparison, hence they are UNFIT and no opinion can be given regarding these prints."

16. From the above scientific evidence, it can be safely concluded that one of the chance prints namely chance print Q3 lifted from the scene of crime was found to be identical with the specimen finger impression S1 of the appellant. It is, of course, not clear as to whether the chance print Q3 was lifted from the steel tumbler or the telephone set or the telephone “dikki”. However, it stands established that the fingerprint of the appellant was found from within the flat where the dead body of Aradhana was lying. The presence of the appellant inside the said flat is therefore established. It is of course another matter as to whether we

can conclude that, because of the matching of the chance print with the specimen finger impression, the appellant had visited the said flat on the date of the incident. It has been revealed in evidence and has even been admitted by the appellant in his statement under section 313 CrPC that he knew the family of the deceased and used to visit them often.

17. The learned counsel for the appellant also drew our attention to Question no.50 and the answer of the appellant in the said Section 313 CrPC statement. The same reads as under:-

“Q.50 It is in evidence against you that as per the report of the Director of Finger Print Bureau of Delhi Police Ex PW21/D, chance print marked-Q3 is identical with Left Middle Finger marked-S1 on the finger impression slip of Satya Bhushan Jain S/o Subhash Chand Jain. What have you to say?

A. **My finger prints were taken by the police in the PS after my arrest and they might have used them against me.”**

18. It was suggested by the learned counsel for the appellant that the chance prints may have been planted. We cannot agree with the submission. The reason being that the chance prints were lifted on 23-08-2002 between 4.30 pm and 6.00 pm as per the crime team report Exhibit PW9/A. This was much prior to the arrest of the appellant which took place on 24-08-2002 at 10.40 pm as per the arrest memo Exhibit PW19/A. But, this still does not lead to the conclusion that the appellant had visited the flat on the date of the incident. The chance print may have been imprinted on the object from which it was lifted on one of his many visits to the said flat.

Oral Evidence

19. Moving on from medical and scientific evidence to oral testimonies, let us first consider the testimony of PW4 Naman Shukla, the older son of PW5 Arun Kumar Shukla and Aradhana. He was about 5½ years old on the date of the incident and about 7 years old when he testified before court. He stated that he knew the appellant as he used to visit his house often. He further stated that on 23-08-2002 at about 1 pm he and his younger brother Yasharth were returning home from school. He saw the appellant Satya Bhushan @ Bunty coming down the stairs “in a fast speed”. He did *namaste* to the appellant but the latter did not reply and went away. He stated that when he went upstairs in the room he found that the television was on and the volume was loud and that his mother was lying dead on the bed. He noticed that blood was oozing out from the veins and she had scratches on her neck and a wire was around her neck.

20. In the course of cross-examination, PW4 Nama Shukla revealed that on seeing his mother lying dead, he went and told an “aunty” who lived in the opposite house and that she rang up his chacha (paternal uncle) Alok Shukla whose telephone number he knew and who gave the phone number of his father. He then contacted his father and called him home but did not relate the incident to him over the phone. He further revealed that his father came back, “maybe in the evening” but he could not tell the time as he was in the “aunty’s” house. He further stated that the police had not arrived when he reached home and that when his father arrived he consoled him and he (PW4) told his father that he had seen Bunty uncle @ Satya Bhushan coming down the stair-case. According to PW4 Naman Shukla, his father rang up the police and it is then that the police arrived and that he (PW4) had told the police about Bunty uncle coming down the staircase.

21. As rightly pointed out by the learned counsel for the appellant, the testimony of a child witness must be viewed with care and with a great deal of circumspection and as a rule of prudence the courts have looked for corroboration. It is true that the court cannot ignore the testimony altogether just because the witness happens to be a child. Where there is corroboration or where the court is otherwise satisfied with the testimony of a child witness being free from influence or tutoring the court can certainly rely upon such testimony. Furthermore, if, upon being subjected to detailed cross-examination, the child witness has not been shaken on the key elements of his/her testimony, the court cannot ignore or brush aside his/her evidence on the core issues. In the present case, far from corroboration, we find contradictions in the testimony of PW4 Naman and his father PW5 Arun Kumar Shukla. For example, PW4 Naman stated that he spoke to his father over the phone but, his father (PW5 Arun Shukla) did not say that he spoke to his son over the phone. On the contrary, PW5 Arun Shukla stated that he had spoken to one Sushma. Then, according to PW4 Naman, his uncle Alok Shukla was contacted to obtain his father's phone number. But, PW2 Alok Shukla did not even mention that he had received any call from PW4 Naman or from anyone else. The "aunty" who has been referred to in the testimony of PW4 Naman Shukla has not been produced by the prosecution. Most importantly, PW4 Naman Shukla stated that he had mentioned the fact of his seeing Bunt uncle rushing down the stairs to his father PW5 Arun Kumar Shukla but, this is not reflected in the latter's testimony as will become clear when we consider the testimony of PW5 in detail.

22. PW3 Brij Nandan Suman is another important witness. He stated that he had “family relations” with PW5 Arun Kumar Shukla and that he knew the appellant Satya Bhushan as he had seen him in PW5 Arun Shukla’s house. He further stated that on 23-08-2002 at about 12.15 pm he went to Arun Kumar Shukla’s house at Pitampura. At that point of time he saw that the appellant Satya Bhushan was having tea with Arun Shukla’s wife. When PW3 Brij Nandan asked for Arun Shukla, he was told that he had gone to court, consequently he (PW3) left for his “court work” at Nimri Ashok Vihar. In the course of his cross-examination, this witness, of course, fell into error in stating that Aradhana was wearing a blue saree (it was actually dark green) and that Aradhana and the appellant were sipping tea from cups (as per the prosecution, they used tumblers not cups). It is doubtful that he would go to meet PW5 at his house on a working day when he knew that PW5 was an advocate and would, in all probability, be in court at that time (12:15 pm). Of course, in his cross-examination he has tried to give an explanation that on previous occasions he had met PW5 in his house during working hours. But, that does not remove the doubt in our minds with regard to his actually going to PW5’s house on that date at 12:15 pm.

23. PW5 Arun Kumar Shukla testified that he was an advocate by profession and Aradhana was his wife and they had two sons, namely, Naman aged about 5½ years and Yasarth aged about 4½ years at the time of the incident. He stated that at about 7:45 am on 23-08-2002 he left his sons in the school Matador (van) and he, himself, left home at about 8.15 am for Tees Hazari Courts and at that time his wife was in the house and she was well. At about 2.00 pm somebody had telephoned him that something had happened to his wife and that his children were not feeling well. When he tried to call his house, the phone kept ringing but no one answered

the calls. He further stated that Sunil, a typist, was a resident of the second floor of the house No. JU-24C and that he (PW5) telephoned his (Sunil's) house and Sunil spoke over the phone. PW5 then asked Sunil to go and find out as to what had happened to his wife. However, Sunil, after hearing the other person talking over the phone, immediately handed the phone instrument to him (PW5) and told him to speak to Sushma who was also a resident of the same building. Sushma told him (PW5) that something has happened to his wife and that he should come home.

24. As per the testimony of PW5 Arun Kumar Shukla, he alongwith his friend H.S. Ansari (advocate) went to his home on his scooter and reached there at about 2.35 pm. He further stated that he saw his wife Aradhana lying dead on the bed, blood was oozing out from her left hand and a wire was tied around her neck. He immediately telephoned the police and the police arrived at the spot. According to him, the police conducted primary investigation and found that Rs 10,000/- cash and four gold bangles belonging to his wife and a gold chain from her neck and a gold ring were found missing. His statement (Exhibit PW5/A) was recorded by the police in which he had stated that he had no suspicion on anyone.

25. In his examination-in-chief, PW5 Arun Kumar Shukla further stated that he could not produce the receipts of jewellery items as the same were ancestral. He also stated that he had been called by the IO to the court of Ms Nisha Saxena, MM, but, due to some reason the TIP of the jewellery could not be carried out and that he could "*identify the jewellery today..*". The said jewellery and cash was sought to be identified in the trial court in the following manner:-

“At this stage, sealed parcel sealed with the seal of NS is opened, contents are taken out and shown to the witness. 2 gold

bangles and a gold chain and cash of Rs. 10,000/- (Rs. Ten Thousand) are taken out. Bangles Ex. P-12/1 to 2 and chain Ex.P 13 are belonging to my wife which I identify and cash Ex.P14 is belonging to us.

At this stage, sealed parcel sealed with the seal of NS is opened. I have seen the contents which are 2 bangles of gold Ex.P-15/1-2 one gold ring Ex.P16 are belonging to my deceased wife and cash Rs. 1500/- in the currency notes of Rs.50 each is Ex.P17 belonging to us.”

26. In the course of his cross-examination, PW5 Arun Kumar Shukla revealed that the person who informed him on the phone did not disclose his name nor was he familiar with his voice nor did he disclose that he was residing in the neighbourhood. He also stated that a person passing on the road would not be in a position to see what is happening in his house in the first floor. He further revealed that no one from any of the flats in the building had called him up in the office. He clarified that Sunil was with him in his chamber when he made the phone call and spoke to Sushma. He indicated that he reached his house at about 2:35 PM and at that time nobody from the public was present at his house. He informed the police immediately and the police came after about 5/7 minutes. He further stated that the police did not allow anybody to enter his house and that he did not enquire anything from any of the neighbours as he was mentally disturbed. Importantly, he revealed that nobody told him that they had seen any outsider in his flat prior to lodging of the report as no person was present at his flat to give such information to him. He further stated that his statement exhibit PW 5/A was probably recorded after half an hour of the arrival of the police. He also stated that the appellant, though not a blood relative, was like a younger brother to him and was the only person apart from blood relatives who was permitted to visit his house in his

absence and that he was well aware of the circumstances and that he had sufficient money to purchase the flat. He further stated that despite him giving 15 calls to the appellant, the latter did not respond.

27. At this juncture, it is relevant to note that neither Sunil nor Sushma nor HS Ansari (advocate) have been produced by the prosecution so that the statements of PW 5 Arun Kumar Shukla concerning them could be corroborated. Even the caller who allegedly, first, informed PW5 has remained a mystery. But, what is of greater significance is that PW5 has nowhere stated that his son PW4 Naman Shukla told him that he had seen the appellant coming down the stairs at about 1 PM on that day. In fact, there is no mention of any conversation or interaction with his son PW4 Naman on that date.

28. PW 21 Inspector BR Maan is the investigating officer. He stated that when he reached the spot, Arun Kumar Shukla, husband of the deceased, was present and that ASI Hans Raj had recorded the statement of Arun Kumar Shukla. He further stated that subsequently he recorded the supplementary statement of Arun Kumar Shukla and statement of Naman Kumar Shukla. He had also recorded the statement of Brij Nandan, "one public witness". According to PW 21, the specimen fingerprints of Satya Bhushan were taken at the police station on 24-08-2002 and was sent to the fingerprint bureau for comparison with the fingerprints lifted from the spot. Upon a court question being put to the said witness, he replied that the fingerprints of the appellant were taken without any permission of the court.

29. Upon cross-examination, PW 21 Inspector BR Maan stated that he had received the information on a wireless set while he was in court premises at about 1:30 PM or 2 PM and that she had reached the spot at about 2:20 PM or 2:25 PM. Interestingly, he revealed that he had contacted Sushma in order to ascertain further facts from her but she refused to make a statement. He had not mentioned this fact in his case diary. He had also contacted Sunil but he also refused to make any statement. He further revealed that he had made enquiries from the children of Arun Kumar Shukla and that he recorded the statement of Naman Kumar Shukla. He admitted that in the statement exhibit PW 5/A, Arun Kumar Shukla had not made any statement to the effect that his son Naman had also told him about the appellant Satya Bhushan being seen by him at the house. He also admitted that in his statement exhibit PW 5/A, Arun Kumar Shukla had not raised any suspicion on anyone. However the witness volunteered that Arun Kumar Shukla had named the appellant Satya Bhushan alias Buntty in a supplementary statement.

30. As regards the alleged recovery of the knife Ex.P-13, PW21 Inspector B.R. Maan stated that on 25-08-2002 the appellant led the police party to a vacant plot at Krishan Vihar in between plot no.99 and 101 and from the grass, after searching, produced a knife Ex.P-13 which was taken into possession vide memo Ex. PW11/F. A sketch Ex.PW11/E was also prepared. In his cross-examination, PW21 has stated that on 24-08-2002 itself they had left the house of the appellant at 8.30 PM and reached the vacant plot in Krishan Vihar for recovery of the knife at 8.45 PM. But, as it was dark, it was not found despite the search. He also stated that the plot from where the knife was recovered was accessible in the sense that anybody could throw anything in.

31. PW19 Constable Jagbir Singh, in his examination-in-chief proved the arrest memo Ex. PW19/A and personal search memo Ex. PW19/B both dated 24-08-2002 in respect of the appellant. He further stated as follows:-

“Black Pant and blue check shirt which the accused was wearing at the time of arrest were taken into possession as the same were blood stained vide memo Ex. PW19/C bearing my signatures at point A.”

32. PW 22 SI Jai Prakash testified that the appellant Satya Bhushan was arrested from his house E-169-A, Krishan Vihar on 24-08-2002 vide arrest memo Ex. PW19/A and personal search of the appellant was conducted vide memo Ex. PW19/B. It is further stated by him that thereafter the appellant was interrogated and his disclosure statement was recorded and he was produced before court whereupon he was remanded to police custody for two days. Thereafter, the appellant got a polythene bag containing two gold karas, one gold chain and Rs. 10,000/- recovered from behind a sofa placed in the drawing room of his house. It is revealed by him in the course of his cross-examination that the alleged personal search of the appellant was conducted by him. He had this to say:-

“The accused was searched personally thoroughly. At the time of arrest of the accused, the clothes which he was wearing were not taken into possession. The accused was produced in the same clothes which he was wearing at the time of his arrest., before the MM. Accused was produced before the MM at 3.30 or 3.45 pm. Till that time, I had not noticed blood on the clothes of the accused. Inspector B.R. Maan also did not tell me that he had noticed blood on the clothes which the accused was wearing.”

He also revealed that the gold Karas, gold chain and money were recovered from the house of the accused at about 5.30 PM and that the house of the accused was lying open at that time.

Defence Evidence

33. We also need to consider the evidence led by the defence. DW 1 Suresh Kumar stated that he had a grocery shop and was also running a business of sweets. He testified that the appellant Satya Bhushan Jain was known to him and that he used to come to a shop for supplying various items. He further stated that on 23-08-2002, the appellant came to a shop at about 11 AM/11:30 AM for collecting money on account of supply of goods. According to this witness, he gave him Rs. 150/-towards part payment. DW 1 stated that the appellant remained in the shop till 1 PM on that day and thereafter he left. This witness was cross-examined by the learned APP. He stated that he did not issue any slip of receipt of goods from the appellant nor did he collect any receipt of signature of the appellant against the payment made to him nor did he have any written proof that he was to pay a sum of Rs. 550/- to the appellant but only made a payment of Rs. 150/-. He also stated that he did not keep accounts of the shop as it was a small business. He, of course, denied the suggestion that the appellant had never come to his shop to supply any item and that he did not make any payment to him.

34. DW 2 Subash Jain is the father of the appellant and he testified that the appellant used to do business with him for the supply of grocery items. He stated that on 23/08/2002, the appellant had left him for supply of grocery items to different persons and had returned at about 2:30 PM and on his return he had informed him that he had visited the shops of Suresh Kumar Sharma and Lovely

General Store in Vijay Vihar. According to this witness, the appellant had also informed him that he had collected Rs. 150/- or Rs.160/- from Suresh Kumar Sharma. He further stated that on 23/08/2002 at about 6:30 PM, he had come to know that the murder of the wife of Mr Shukla, advocate had taken place and that he along with his wife visited the house of Mr Shukla and met him and his relatives and other known persons. He stated that at that point of time nobody was talking about his son Satya Bhushan Jain or his involvement in the crime. He further stated that the police visited his house on 24-08-2002 and took away his son Satya Bhushan Jain. The police, however, did not recover anything from his house. In cross-examination, he stated that he never kept any accounts of purchase or supply of grocery items and did not keep any record of the fact that his son had visited any particular person on 23/08/2002 to supply the items or to recover any amount from those persons. He also denied all the suggestions made by the learned APP.

Circumstances

35. As noticed in the impugned judgement, the prosecution relied on, *inter alia*, the following circumstances against the appellant Satya Bhushan Jain:-

- “1. The appellant Satya Bhushan Jain, on the day of the incident was last seen by PW3 Brij Nandan Suman and PW4 Naman Shukla;
2. The appellant Satya Bhushan Jain was arrested on 24/08/2002 and in pursuance of his disclosure statement exhibit PW 21/C got some of the articles recovered which were seized vide memo exhibit PW 21/B;

3. The appellant Satya Bhushan Jain got a knife exhibit P-13 recovered pursuant to his disclosure statement;
4. The clothes of the appellant Satya Bhushan Jain which, on his arrest, were seized by the police vide memo exhibit PW 19/C and were sent for chemical analysis were found to contain blood stains of human origin of blood group B as per the report exhibit PW 15/B;
5. The chance print Q3 matched with the specimen fingerprint S1 of the appellant Satya Bhushan Jain as per the report exhibit PW 21/D;
6. Medical evidence.

36. Insofar as the medical evidence (circumstance no.6) is concerned, which we have discussed in detail in the earlier part of this judgment, we find that from the post-mortem examination conducted by PW 20 Dr RK Puniya and the forensic science laboratory report exhibit PW 18/A it is established that Aradhana's death was caused by ligature strangulation and the ligature material was the telephone wire tied around her neck.

37. As regards circumstance no.5, from the above scientific evidence, it can be safely concluded that one of the chance prints namely chance print Q3 lifted from the scene of crime was found to be identical with the specimen finger impression S1 of the appellant. However, we must put in a word of caution here. Since the prosecution has not been able to prove as to from which object the chance print Q3

was lifted, no conclusions can be arrived at with regard to when that chance print would have been imprinted on the object in question. It was not that the appellant was a stranger. In fact, PW5 Arun Kumar Shukla has stated that he was like a younger brother to him and used to visit his home frequently and he was the only person, apart from his blood relatives, who was permitted to do so even in his absence. So, the matching of the chance print Q3 with the specimen print S1 does not lead us anywhere.

38. As regards circumstance no.4, it is true that blood stains were detected on the Pant and shirt allegedly worn by the appellant and that the blood was of human origin and of blood group B, which is the same blood group as that of the deceased Aradhana. But, this in itself is not sufficient to connect the appellant with the murder of Aradhana. It must be established as a fact that the said clothes were in fact recovered from the appellant and at his instance and at that point of time the said clothes contained the blood stains. We have already seen the testimonies of the police witnesses which indicate that the said Pant and Shirt were worn by the appellant at the time of his arrest. Even upon personal search, none of the police witnesses noticed any blood stains on the said clothes allegedly worn by the appellant who was then produced before the learned MM. Even then, nobody noticed any blood stains. Then, suddenly, when the appellant, in police custody, is brought to his house, the blood stains appear on his clothes and they are seized. The prosecution version cannot also be believed because it is highly improbable that the accused would have thought of disposing the knife and of hiding the jewellery items but would continue to wear the blood stained clothes even on the next day of the murder! The recovery of blood stained clothes cannot therefore be believed.

39. Circumstance number 3 is concerned with the recovery of the knife exhibit P 13. We are not inclined to believe the prosecution version with regard to the recovery of this knife. It has been revealed in evidence that an attempt was made to recover the knife at about 8:45 PM on 24-08-2002 but the same could not be recovered from the vacant plot as it had become dark and there was tall grass growing on the plot. The knife was allegedly recovered the next day, that is, on 25-08-2002. The investigating officer himself has admitted that the vacant plot from where the knife was allegedly recovered was easily accessible in the sense that anybody could throw anything onto the plot. The police officers already came to know the location of the plot on 24-08-2002 and the possibility cannot be ruled out that the knife was introduced in the intervening period, that is, prior to its discovery on 25-08-2002. Therefore, the circumstance of the alleged recovery of the knife at the instance of the appellant Satya Bhushan Jain does not get established. We must also remember that the knife is not the murder weapon inasmuch as the murder was committed by ligature strangulation and the telephone wire which was found wrapped around the neck of the deceased has been determined to be the murder weapon.

40. Circumstance number 2, also, in our opinion has not been established by the prosecution. We have already indicated above that the two gold bangles, one gold chain and the sum of Rs. 10,000/- were not recovered in the first instance. On the contrary, as per the evidence led by the prosecution and further revealed in cross examination of the police witnesses, the appellant Satya Bhushan Jain was first arrested from his house and then taken to the police station as well as was produced before the Metropolitan Magistrate who remanded him to police custody or two

days. It is thereafter that the police party allegedly returned along with the appellant Satya Bhushan Jain to his house and, then, from behind a sofa the appellant allegedly produced a polythene bag containing the said articles. It has also been revealed in evidence that all this while the appellant's house was lying open. It was very easy for anyone to have introduced the said articles in the said house while the appellant Satya Bhushan Jain was taken in police custody to the police station as also to the court of the MM. There is therefore a very dark cloud of doubt which hangs over the recovery of the said articles.

41. There is another difficulty with the said articles. No TIP was conducted for the identification of the jewellery articles. As per the prosecution, the TIP could not be conducted because similar articles were not available. We find it difficult to believe this. Gold bangles and gold chains are very common in India. Furthermore, PW5 has not been able to give any details which could be specifically descriptive of the jewellery items nor has he been able to provide the name of the jeweller or any receipt for the purchase of the same. His answer was that the said jewellery items were ancestral in nature and therefore such details were not available with him. Insofar as the sum of Rs. 10,000 is concerned, no distinctive numbers or marks have been given so as to specifically identify the same as belonging to PW5. In any event, since we are doubtful about the alleged recovery of the said articles at the instance of the appellant Satya Bhushan Jain, the identification or non-identification of the same by PW5 would be of no consequence.

42. As regards circumstance number 1, we have already indicated our serious doubts regarding the same.

43. We may also point out that the prosecution has also not been able to establish the motive behind the crime.

Conclusion

44. In view of the foregoing, we conclude that the prosecution has not been able to prove its case beyond reasonable doubt. Consequently, giving the benefit of doubt to the appellant, we acquit him of all charges in this case. The impugned judgment and order on sentence are set aside. The appellant is in custody, he is directed to be set at liberty, if not required in any other case.

The appeal is allowed.

BADAR DURREZ AHMED, J

MANMOHAN SINGH, J

October 10, 2011

HJ