

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

**RESERVED ON: 21.11.2011
PRONOUNCED ON: 28.11.2011**

+ **CRL.A. 1257/2011 & CRL. M. (BAIL) 1768/2011**

BIMLA Appellant

Through: Ms. Nandita Rao, Advocate.

versus

STATE (NCT) OF DELHI Respondent

Through: Ms. Richa Kapoor, APP.

**CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MS. JUSTICE PRATIBHA RANI**

MR. JUSTICE S.RAVINDRA BHAT

% 1. This appeal impugns the judgment and order of the learned ASJ dated 25.02.2008 in S.C. No. 20/2005. The appellant was convicted along with other co-accused for the offence punishable under Section 302 read with Section 120-B IPC, and sentenced to undergo life imprisonment.

2. The prosecution had alleged that on 09.09.1999, at about 01.10 am, an information was received through D.D. No. 48 regarding a stabbing incident. The police went to the spot – H-123, Gali No. 4,

Parvatiya Anchal Colony, Burari. By then, the injured Satish had been shifted to the hospital by the PCR. He was declared “brought dead”. After conducting spot investigation articles such as blood samples, earth control, a *khukri* sheath, mattress and saree were seized. Later the deceased’s inquest proceedings were conducted and the body was sent for postmortem – a report of the same was received. The police alleged that the present appellant, Bimla, wife of the deceased had illicit relationship with Parmeshwari. She did not like her husband and, therefore, entered into a conspiracy with the co-accused Parmeshwari. They in turn conspired with Lokesh and Arvind to commit deceased’s murder. Lokesh was to be paid ₹ 45,000/- and the accused Arvind was to be given a share in the property of the deceased, for participation in the conspiracy. It was alleged that further to this conspiracy, in the intervening night of 08.09.1999/09.09.1999, Lokesh and Parmeshwari went inside the deceased’s room and murdered him with a *khukri*. The prosecution, during the investigation, recovered blood-stained jeans, a pair of shoes and shirt worn by him at the time of the incident, pursuant to the disclosure statement. At the behest of Lokesh, a *khukri* was recovered; as well as a vest and a shirt which he wore at the time of committing the offence. The police lifted the foot prints, allegedly of Parmeshwari and Lokesh on the *chatai* at the spot and from the room staircase and roof of the house. After conclusion of investigation, the accused were charged with committing the offence under Sections

452/302/114/120-B/34 IPC. In addition, the present appellant Bimla was charged with offence punishable under Section 411 IPC. All accused pleaded not guilty and claimed trial. The prosecution examined 25 witnesses, besides relying on material exhibits. The Trial Court had, by its impugned judgment convicted all the accused, including the present appellant.

3. Learned counsel for the appellant urges that the co-accused Parmeshwari and Lokesh had preferred appeals, being CrI. A. 244/2008 and CrI.A. 245/2008 which were allowed by the judgment and order dated 16.03.2010 (*Parmeshwari v. State & Lokesh Kumar v. State*). Learned counsel relied on the material parts of that judgment, particularly the following portions:

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8. *Reverting to the evidence, we do not intend to pen-profile what has been spoken by various witnesses. It would be sufficient for us to note that in convicting appellant Parmeshwari the incriminating evidence held established against Parmeshwari, as per the impugned decision, is that after he was arrested and he made a disclosure statement, he led the police to a spot and got recovered a blue jeans as per memo Ex.PW-6/C followed by a recovery of a pair of shoes and a shirt as recorded in the memo Ex.PW-7/A. As per the report Ex.PW-25/H and Ex.PW-25/H-1 of the serologist, human blood of the same group as that of the deceased was detected on the shoes, the shirt and the jeans. Further incriminating evidence held established against Parmeshwari is the*

report Ex.PW-22/C as per which a foot-print lifted from the scene of the crime was opined to be as possibly that of Parmeshwari. We may note that the expression used by the expert is: "That the foot-print lifted from the scene of the crime could be that of Parmeshwari".

9. Against Lokesh Kumar, incriminating evidence held established is that another foot-print was opined to be as possibly that of Lokesh Kumar as per report Ex.PW-22/C. Further incriminating evidence against Lokesh Kumar is that after he was arrested and made a disclosure statement he got recovered a khukri as shown entered in the memo Ex.PW-6/D as also a white sandoz vest and a shirt as entered in the memo Ex.PW-6/E, all of which except the khukri were detected with human blood of the same group as that of the deceased vide report Ex.PW-25/H and Ex.PW-25/H-1 of the serologist. On the khukri, blood was detected but neither its species nor the group could be detected.

10. Apart there-from the further incriminating evidence held established by the learned Trial Judge is that Parmeshwari was having illicit relations with Bimla and that the motive for the crime was to do away with Satish so that Parmeshwari and Bimla could have a merry time.

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14. The first and the foremost question which needs to be answered is whether it stands satisfactorily proved that Bimla and Parmeshwari were having illicit relationship.

15. *The witnesses who have thrown light on the relations between Bimla and Parmeshwari are Vijay Singh PW-6, Babita Sharma PW-7 and Surinder Kumari PW-20.*

16. *We note that Vijay Singh has deposed that he saw Bimla talking with Parmeshwari two to four times and once having seeing Parmeshwari putting his hands on the breast etc. of Bimla. We note that on being cross-examined he admitted that it was for the first time he had stated in Court that he had seen Parmeshwari putting his hands on the breast of Bimla and that he had not ever so stated before the police.*

17. *Babita Sharma PW-7 deposed that Bimla used to meet Parmeshwari and had told her that she was Parmeshwari's bhabhi. That at the instance of their distant relative Shashi Prabha, a room was given on rent to Parmeshwari.*

18. *Surinder Kumari PW-20, the mother of Babita Sharma has likewise deposed that at the asking of their relative Shashi Prabha she had let out a room in her house to Parmeshwari and that Bimla used to visit Parmeshwari. She additionally deposed that Shashi Prabha was close to Bimla and that when room was given on rent to Parmeshwari, Bimla and Shashi Prabha had come with Parmeshwari.*

19. *It may be noted that the learned Trial Judge has held that the keen interest shown by Bimla to get on rent a tenanted premises to Parmeshwari and her visiting Parmeshwari is sufficient evidence wherefrom it can be gathered that the two were having illicit relationship.*

20. *We have our doubts whether such a finding could be returned on so thin a piece of evidence. Merely because a man and a woman meet would not mean that the two are having illicit relationship.*

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4. It was urged that even recoveries allegedly made pursuant to the disclosure statements of the co-accused were disbelieved by this Court since there was no independent corroboration about recovery of the shoes and the clothes worn by them at the time of committing the crime. Furthermore, the Court relied upon the decision of the Supreme Court, i.e. *Mohd. Aman & Anr. v. State of Rajasthan* 1997 (10) SCC 44 to say that the signs of footprint analysis is not well-developed because unlike fingerprints which contain distinct characteristic which can be developed, no such characteristic mark can be ascertained from the footprints. The Court also noted that the expert had merely stated that the footprints could have been that of Parmeshwari and Lokesh; there was no decisive opinion.

5. It was urged that in this state of evidence, when the entire prosecution case against the co-accused who were the alleged perpetrators of the crime were disbelieved, the role attributed to the present appellant, i.e. as an accomplice or co-conspirator could not stand. In other words, submitted learned counsel, once the main

offenders were absolved of the charge of murder as well as conspiracy, her conviction could not stand.

6. Learned counsel also urged that independently of the judgment of this Court in the case of the co-accused, the testimony of PW-6, who was prosecution's star witness with regard to the allegations of an extra-marital relationship between the appellant and Parmeshwari, was unreliable. It was pointed-out that PW-6 did not ever mention about this alleged relationship in the course of his statement recorded during the investigation, under Section 161 Cr.PC. In these circumstances, the improvement made during the course of the trial could not have been taken into consideration by the Trial Court. Furthermore, this witness did not also support his previous statement about the deceased asking Parmeshwari to leave premises (where he lived) as a tenant when he came to know about his illicit relationship with Bimla. PW-6 had made several statements seeking to implicate the Appellant but did not support it during the course of his examination-in-chief. On the other hand, submitted learned counsel, PW-7's testimony revealed that there was nothing objectionable in the relationship between Parmeshwari and the appellant. Similarly, argued the counsel, PW-20, father of PW-7 could not corroborate or definitively say that the appellant had an objectionable relationship with the co-accused Parmeshwari.

7. The APP, Ms. Richa Kapoor, argued that even though the other co-accused were acquitted, the Appellant's conviction can be sustained on independent grounds. It was argued that when the police reached the spot, they found that the deceased was lying in his room; in view of this evidence, and the fact that the Appellant was his wife, residing with him, she owed an explanation about the occurrence. Counsel also relied on the testimony of the IO, PW-16, who said that when he reached the scene of occurrence, he was told that the appellant was unconscious, but that she was pretending. The lack of explanation as to how the incident occurred, coupled with the topography of the house, from the rooftop of which the *Khukri* sheath or cover was recovered, had not been explained at all. Therefore, there was strong circumstantial evidence to convict the Appellant.

8. As discussed in a previous part of the judgment, the prosecution's case was that the motive for the murder was the illicit relationship between the present Appellant, and the other co-accused. This court has already found that the so-called motive was based on extremely tenuous and weak evidence, which could not be believed. This was so held in the 16th March, 2010 in Parmeshwari's appeal. This aspect was highlighted far back in *Topandas v. State of Bombay* (AIR 1956 SCC 33 para 6):

*"Criminal conspiracy has been defined in Section 120A Penal Code:
"When two or more persons agree to do or cause to be done (i) an*

illegal act, or (ii) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.”

By the terms of the definition itself, there ought to be two or more persons who must be parties to such an agreement and it is trite to say that one person alone can never be held guilty of criminal conspiracy for the simple reason that one cannot conspire with oneself. If therefore, 4 named individuals were charged with having committed the offence under Section 120-B Penal Code and if three out of these 4 were acquitted of the charge, the remaining accused, who was the accused No. 1 in the case before us, could never be held guilty of the offence of criminal conspiracy.”

9. Apart from the conspiracy angle, the prosecution’s valiant attempt to salvage – indeed resurrect – the conviction in this case, by saying independent evidence existed to premise, it, cannot be countenanced. Having once gone to court with the case of conspiracy, and having ascribed a role to the Appellant, it is not now open to it to build an entirely new case. Furthermore, we notice that whether the actual incident occurred on the street, or in the deceased’s house, is not free from doubt. Indeed, in the first intimation, as well as the testimonies of the police who reached the spot, the consistent line taken is that the deceased was stabbed on the street. We also notice that according to the witnesses who deposed in the case, about 15-20 people had gathered in the area, when the spot proceedings were on. The seizures of the door mat, and other articles took place from Parmeshwari’s house. The sketch of the house reveals that there were other rooms; the deceased was apparently sleeping in a verandah. What is more, PW-5, a carpenter, spoke about being asked to make a box to keep the *khukri*; however, that was not sealed. Though there is

a seizure memo, no witness mentioned who actually seized and sent the weapon to the doctor.

10. Having regard to all the circumstances, and the fact that the co-accused were acquitted, the conviction and sentence of the Appellant cannot be sustained. The impugned judgment and order, is, therefore, set aside. The Appellant shall be released forthwith. The Appeal is allowed in these terms.

**S. RAVINDRA BHAT
(JUDGE)**

**PRATIBHA RANI
(JUDGE)**

NOVEMBER 28, 2011