

\$~1

* IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: May 11, 2012

+

CRL.A. 236/2012

SIKANDER Appellant
Represented by: Mr. Pramod Kumar Dubey,
Mr. A.S. Rathore, and Mr. Hemant
Shah, Advocates.

versus

STATE (NCT OF DELHI) Respondent
Represented by: Mr. Harsh Prabhakar, Advocate for
Mr. Pawan Sharma, Standing Counsel
(Criminal).

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

PRADEEP NANDRAJOG, J. (Oral)

1. Process of law was set into motion when on August 01, 2004 at 09:05 AM, DD No.6, Ex.PW-5/A was recorded at Police Post Bhati Mines to the effect that wireless message has been received from the Police Control Room from lady Ct. Pushpa informing that a husband and a wife were quarrelling at Sanjay Colony, Near Gate of a Zoo in Bhati Mines.
2. It may be highlighted that there is no zoological park at Bhati Mines but the Asola Wildlife Sanctuary extends till Bhati Mines.
3. As deposed to by SI Devender Yadav PW-7 and Ct. Ved

Prakash PW-1, copy of DD No.6 was handed over to SI Devender Yadav for inquiry and accompanied by HC Mahender Singh (not examined) and Ct.Ved Prakash, the trio reached Sanjay Colony, Bhati Mines.

4. It is the case of the prosecution that on reaching Sanjay Colony, Bhati Mines they went to the house of the appellant where he was residing with his wife Ganga Bai (the deceased) and their children and found Ganga Bai lying dead as a consequence of injuries caused by an axe. The brother of the deceased, Raja Ram PW-4 and the son of the deceased Diwan PW-2 being present at the spot. The kurta and pyjama Ex.P-2 and Ex.P-3 respectively worn by the appellant was found to be stained with blood. As per the prosecution, a crowd which had gathered had overpowered the appellant whose custody was handed over to the police team at the spot itself.

5. Suffice would it be to state that no investigation was necessary. It is the case of the prosecution that the accused was apprehended at the spot.

6. The evidence to establish as aforesaid led by the prosecution would obviously commence by the rukka, which we find is the statement Ex.PW-4/A made by Raja Ram and recorded by SI Devender Yadav. The rukka records that Raja Ram resides in Sanjay Colony, Bhati Mines and that as usual he left his house at 8:30 AM in the morning to report for work but on reaching the bus stand learnt that due to a live telecast of a cricket match it was a holiday. He decided to visit his sister Ganga Bai who resided nearby and as he approached the house of his sister he heard cries of rescue. He paced up. As he reached the house he saw his

brother-in-law Sikander i.e. the appellant with an axe in his hand and his sister lying on the floor with blood oozing from her mouth. People gathered. Appellant was prevented from fleeing. Somebody informed the Police Control Room. The police reached the spot and he handed over appellant's custody to them.

7. Making an endorsement Ex.PW-7/A beneath Ex.PW-4/A, as deposed to by PW-7, the rukka was dispatched from the spot at 10:35 AM. As deposed to by ASI Adesh Kumar PW-6, being posted as the Duty Officer at PS Mehrauli, on receipt of the rukka sent by SI Devender Yadav PW-7 through Ct.Ved Prakash PW-1, he registered the FIR Ex.PW-6/A and through Ct.Krishan sent the FIR to be delivered to the Ilqa Magistrate. Corresponding DD Entry No.10A was made recording that the FIR was registered at 11:30 AM.

8. Returning with a copy of the FIR to the spot by the time Ct.Ved Prakash returned, Insp.M.L.Sharma, PW-11, the SHO of the concerned police station also reached the spot.

9. Seizure memos Ex.PW-2/B and Ex.PW-2/E were drawn up by Insp.M.L.Sharma, the former pertaining to the seizure of the blood sample of the deceased and the axe from the spot, the latter pertaining to the personal clothes worn by the accused. Personal search memo Ex.PW-2/G was also drawn up by him as also the arrest memo Ex.PW-2/F, which we note bears the signatures of Diwan PW-2 and Raja Ram PW-4. Additionally, SI Devender Yadav PW-7 and HC Mahender (not examined) also signed as witnesses.

10. Needless to state, the dead body was seized and sent to mortuary for post-mortem.

11. Photographer Ct.Girdhar Singh PW-9 was summoned who took the photographs Ex.PW-9/P-10 to Ex.PW-9/P-17 negatives

whereof are Ex.PW-9/P-1 to Ex.PW-9/P-9.

12. Dr.Sanjeev Lalwani PW-3 conducted the post-mortem on the dead body of the deceased and prepared the report Ex.PW-3/A, as deposed to by him. Subsequently, when the axe in question was sent to him for an opinion he gave the opinion Ex.PW-3/B and needless to state, opined that the injuries caused on the person of the deceased could possibly be caused by the axe in question.

13. Post-mortem report highlights that the cause of death was shock and haemorrhage due to multiple craniofacial injuries No.4 to 8 recorded in the post-mortem report and that they were collectively sufficient to cause death in the ordinary course of nature. He also opined that the head injury was individually sufficient to cause death.

14. Diwan PW-2, the son of the deceased and the accused did not support the case of the prosecution, in that, he resiled from his statement recorded by the Investigating Officer during investigation.

15. Since certain statements made by him when he appeared as PW-2 have been relied upon by learned counsel for the appellant while arguing the appeal, it would be our duty to note what was highlighted as favourable to the accused by learned counsel for the appellant.

16. Diwan deposed that he left his house on the day of the incident at 07:00 AM and was informed by his uncle Bane Ram that his father has killed his mother (a statement which we feel ought not to have permitted to come on record for the reason it is hearsay). Be that as it may, he stated that when he returned he saw the dead body of his mother being placed in a police van and

he accompanied the police along with dead body of his mother to PS Mehrauli. That Raja Ram was present at the house when he returned. His statement was recorded and the dead body was sent to AIIMS. Next day he identified the body of his mother at the mortuary. He stated that he returned to his house at about 09:00 – 10:00 AM on the day of the incident by when his father had been taken away by the police. He stated that his maternal uncle Raja Ram PW-4 was present in the house when he returned and had accompanied him in the police van. Being declared hostile, for the reason he was resiling from what he had statedly told to the Investigating Officer and as recorded in his statement recorded under Section 161 Cr.P.C., on being cross-examined by the learned APP he stated that he was at the bus-stand at about 08:50 AM when somebody informed him of a quarrel between his father and his mother.

17. This is in apparent conflict with what he stated earlier, of his uncle informing him that his father had killed his mother when he was in Noida. This statement is also in conflict with his earlier statement that he left the house at 07:00 AM. Needless to state as stated by Diwan when he was cross-examined by the learned APP that he was at the bus-stand at 08:50 AM when he learnt about his mother being injured, it would be difficult to believe his statement in examination-in-chief that he left the house at 07:00 AM inasmuch as it is impossible that he could not have caught a bus till as late as 08:50 AM.

18. Confronted with various portions of his statement recorded by the Investigating Officer, he denied having witnessed the facts noted therein as also that he informed the Investigating

Officer of any such fact. But, he stated during cross-examination by the learned APP that his parents use to fight all the times in the day and the night. On being cross-examined by the appellant he once again contradicted himself by stating that by the time he reached his house from Noida, he saw Raja Ram present in the house.

19. Picking on the testimony of the Diwan, it is sought to be urged by learned counsel for the appellant that as per Diwan he had left to work at Noida at 07:00 AM on the day of the incident and when he returned to the house at about 09:00 – 10:00 AM and that prior to his reaching the house his father had been taken away by the police. Therefrom, learned counsel urges that it is apparent that the arrest memo, the seizure memo and the participation by Diwan at the spot proceedings is fabricated.

20. But, as noted by us herein above, the argument overlooks the fact that on being cross-examined by the learned APP, Diwan stated that he was still at the bus-stop at around 08:50 AM when somebody informed him about the quarrel between his parents and he returned to his house. His statement when cross-examined by the accused that when he returned to his house from Noida, Raja Ram reached the spot when he was sitting in the police vehicle is of no help to contradict Raja Ram. Diwan, is no doubt the son of the deceased but he is equally the son of the accused and this explains his vacillating statements. It is natural and expected for a son, as time heals the wounds, to forget the pain of the loss of the mother and for love for the father surfacing. Needless to highlight that while deposing during examination-in-chief, Diwan stated that when he returned home he saw his uncle Raja Ram in the house but later on contradicted himself to say that Raja Ram

came when he was sitting in the police jeep and once again contradicted said stand when cross-examined by the appellant and stated that when he returned to his house Raja Ram was present.

21. Thus, it would be fairly useless to seek to discredit Raja Ram with reference to the testimony of Diwan.

22. Raja Ram examined as PW-4 has deposed in sync with his statement Ex.PW-4/A which has formed the basis of the rukka. He has stood by the seizures made at the spot and he having witnessed the same and as recorded in the various seizure memos.

23. To discredit Raja Ram it is urged that during cross-examination after stating that his statement Ex.PW-4/A was recorded at around 08:45 AM he stated that his signatures were obtained at the police station at 04:00 PM. Therefrom it is sought to be urged that contrivance in the registration of the FIR is apparent. His statement during cross-examination that statement of Sikander was not recorded in his presence and he had signed all documents at the police station, are highlighted to bring home the point that even said admission would evidence a contrivance of preparation of the memos by the Investigating Officer. In a nutshell, what is sought to be urged is that this casts a serious doubt on the accused being apprehended at the spot and as recorded in the statement Ex.PW-4/A and the endorsement Ex.PW-7/A made thereunder by SI Devender Yadav PW-7. Taking the argument forward our attention is drawn to a statement made by Ct.Girdhar Singh PW-9, when on being cross-examined, he stated that he did not notice if the accused or relatives of the accused were present at the spot. Learned counsel for the appellant would urge that totality of the aforesaid casts a serious doubt, at least of a

standard requiring benefit of doubt to be extended to the accused with reference to the accused being apprehended at the spot.

24. Now, as noted by us herein above ASI Adesh Kumar PW-6 has deposed that he was posted as the Duty Officer at PS Mehrauli on August 01, 2004 and that on the basis of the rukka sent by SI Devender Yadav through Ct.Ved Prakash he had recorded FIR No.481/2004, Ex.PW-6/A, and had sent a copy of the same to the Ilaqa Magistrate through Ct.Krishan. We highlight that in spite of opportunity granted ASI Adesh Kumar has not been cross-examined. The witness has not been examined with respect to the time recorded on the rukka of it being dispatched from the spot at 10:35 AM. The witness has not been cross-examined with reference to it being recorded on the teherir that vide DD No.10A at 11:30 AM the FIR was registered. Even with reference to FIR Ex.PW-6/A, witness has not been cross-examined that, as recorded in column No.3(c), the time when FIR was registered is 11:30 AM. This rules out any contrivance by the Investigating Officer to fabricate the time of the FIR being registered.

25. It is no doubt true that Raja Ram PW-4 has made certain statements, which as highlighted herein above, to which our attention has been drawn by learned counsel for the appellant would tend to suggest to the contrary, but it cannot be forgotten that Raja Ram comes from a humble socio-economic background. We say so for the reason he lives in a slum colony called Sanjay Colony, Bhati Mines. It is apparent that he would have confused his subsequent visits to the police station along with Diwan for purposes of inquest proceedings when also signatures are obtained from the relatives to identify the dead body of the deceased and

this explains the discrepant statements made by Raja Ram. Suffice would it be to state that only when the nature of discrepant statement is of a kind that it is not mutually reconcilable with the remainder and is destructive of the remainder statements, can it be said that a witness stands discredited.

26. SI Devender Yadav PW-7 has deposed that he reached the spot at about 09:15 AM. He deposed in sync with what we have noted herein above. He has stated that contemporaneous statements and documents were prepared contemporaneously and we would only highlight that his testimony has been sought to be discredited by contrasting the same with the testimony of Diwan to bring home the point that if what Diwan has stated is correct, SI Devender Yadav's testimony would be discredited. We have noted our reasons herein above as to why Diwan has resiled from what he had told the police during investigation and thus we terminate the debate by recording that evidence in this case does not warrant the testimony of SI Devender Yadav to be discredited with reference to the testimony of Diwan.

27. With reference to the axe, Ex.P-1, being the weapon of offence, we have already noted herein above the testimony of PW-3. On the issue whether the accused used the axe, learned counsel for the appellant draws our attention to the testimony of Raja Ram who stated that the accused threw the axe on the floor which was later on picked up by the police and contrasts the same with the admission made by the Insp.M.L.Sharma, PW-11, when he was confronted with the photograph Ex.PW-9/P-10 and he stating that the axe was in a standing position.

28. We highlight that the photograph in question certainly

show that an axe is seen with the blade on the floor and the handle perpendicular to the floor; resting against a shelf.

29. We are pained to note the lackadaisical manner in which the offer of the rank of a Station House Officer has deposed. Had the witness bothered to correctly remember the facts and had seen the photographs carefully, he would have deposed that the photographs Ex.PW-9/P-15 and the photographs Ex.PW-9/P-17 show the axe lying on the floor i.e. the blade and the handle lying flat on the floor. He could have easily explained that after taking the photographs with the axe lying on the floor, to give a visual feel of the length of the handle of the axe, it was placed perpendicular to the floor and photographs taken.

30. As regards the argument that why was no neighbour produced as a witness, suffice would it be to state that it is the quality of the evidence which matters and not the quantity thereof.

31. Now, if the accused was present in the house when his wife suffered fatal injuries, Section 106 of the Evidence Act would be attracted inasmuch as how the wife suffered the injuries would be a fact in the personal knowledge of the accused and unless he speaks adverse inference would be drawn against him.

32. Evidence noted herein above establishes unerringly to the presence of the appellant in the house. The rukka brings the curtains down in full stream.

33. As per Section 9 of the Evidence Act, facts which are necessary to explain or introduce a fact in issue are relevant facts, and in this connection DD No.6 which records information of a quarrel between a husband and the wife at the spot where ultimately the wife was found fatally assaulted assumes

importance.

34. It needs to be highlighted that when examined under Section 313 Cr.P.C., to the question: *It is in evidence against you that you were arrested and your personal search was conducted vide memo Ex.PW-2/G. You were interrogated and your disclosure statement Ex.PW-2/D was recorded. What you have to say?*

35. The answer is: *It is matter of record. However I did not make any disclosure statement. My signatures were obtained on blank papers.*

36. It is not the case of the appellant that he was arrested subsequently and not as recorded in the arrest memo Ex.PW-2/F.

37. Though the serological report has not been able to connect the blood group of the deceased with the blood stains on the kurta and pyjama Ex.P-2 and Ex.P-3 worn by the appellant when he was arrested, for the reason the blood samples of the deceased had putrefied, it needs to be highlighted that on the clothes worn by the appellant when he was apprehended at the spot, blood of Group 'A' was detected. He had to explain as to wherefrom his clothes got stained from blood. As regards the evidence that the kurta and pyjama i.e. Ex.P-2 and Ex.P-3 were worn by the appellant when he was apprehended, we have the docket identification and the testimony of the Investigating Officer Insp.M.L.Sharma PW-11 which is corroborated by testimony of Raja Ram PW-4 who has deposed that in his presence the clothes worn by the accused, Ex.P-2 and Ex.P-3, were seized at the spot. That the photographer Girdhar Singh PW-9 stated during cross-examination that he did not notice any relatives of the deceased at the spot does not belie the testimony of PW-4, PW-7 and PW-11 of PW-4 being in the house

inasmuch as it does happen that a person who is so concerned with his work fails to notice other people around or having noted their presence fails to recollect said fact inasmuch as their presence at the spot was recorded in the mind as an ancillary fact; the principle fact etched in the memory being the job which was performed at the spot.

38. The evidence establishes the appellant being in the house when his wife was fatally assaulted. Though there is no eye-witness, but evidence establishes that within minutes of cries being heard from the house Raja Ram PW-4 reached the house. The appellant was in the house with an axe in his hand, blood stains on his clothes and his wife lying fatally injured. In fact, she died at the spot itself.

39. Evidence establishes beyond a shadow of doubt that the appellant caused the fatal injuries to his wife, the photographs as also the post-mortem report Ex.PW-3/A would evidence serious and grievous injuries caused to the deceased. As per the post-mortem report as many as 7 injuries were caused to the deceased as under:-

“1. Incised looking lacerated wound 6 x 1.5 cm vertically placed bone deep over middle 1/3 dorsal aspect of left forearm.

2. Incised looking lacerated wound 4.5 x 1.2 cm vertically placed deep over middle 1/3 dorsal aspect of right forearm.

3. Incised looking lacerated wound obliquely placed on lt. leg upper 1/3 anteriorly & abrasion of size 6 x 0.5 cm x bone deep.

4. Incised looking lacerated wound of size 2 x 1 cm on lt. side chin with fracture of underlying mandible

bone & extravasation of blood.

5. Multiple cut lacerations of both upper and lower lip of varying sizes with fracture dislocations of teeth in both upper and lower jaws in left side with extravasation of blood.

6. Incised looking lacerated wound of size 2 x 1 cm over lateral side of right eyebrow with fracture of Lt side orbital plate laterally & extravasation of blood.

7. Two punctured wounds of size 1 x 0.5 cm and 0.5 x 0.5 cm over Lt. malas (maxillary region) bone deep with fracture of Lt side maxillary bone & upper jaw & antemortem bleeding.”

40. Injuries No.1, 2 and 3 evidence indiscriminate assaults on the deceased and her attempt to ward off the same. This explains the incised wound on the dorsal aspect of the left forearm and the dorsal aspect of the right forearm and the left leg.

41. Injury No.4 shows a powerful blow on the left chin. The ferocity of the blow is evidenced by the fact that the mandible bone was fractured resulting in extravasation of the blood vessels. The next injury also shows a powerful blow on the face evidenced by the fracture and dislocation of the upper and the lower jaw on the left side; teeth being broken and extravasation of blood vessels. Injury No.6 is a blow on the forehead right above the right eyebrow. The left orbital plate has been fractured with extravasation of blood. Two other punctured wounds on the maxillary region, bone deep with fracture of the left maxillary bone are suggestive of the fact that the accused was repeatedly attacking the vital part of the body i.e. the skull. Cause of the death is craniofacial injuries which have been opined sufficient to cause death in the ordinary course of nature, collectively as well as individually.

42. We concur with the view taken by the learned Trial Judge that the prosecution has succeeded in establishing the charge led against the appellant of having, with an intention to cause the death of his wife, assault her using an axe and as a consequence of the injuries caused, the deceased having died; the time being 08:45 AM, the date being August 01, 2004 and the place being the matrimonial residence of the accused and the deceased.

43. The appeal is accordingly dismissed.

44. We would place on record appreciation for the learned Amicus Curiae who has done his best under the circumstances which he could.

45. Copy of this order be sent to the Superintendent, Central Jail, Tihar for record and thereafter to be supplied to the appellant so that, if the appellant desires he may avail further legal remedies available to him.

PRADEEP NANDRAJOG, J.

SIDDHARTH MRIDUL, J.

MAY 11, 2012
dk