

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRIMINAL APPEAL No. 1313/2011

Judgment reserved on : 14th January, 2013

Judgment pronounced on: 07th February, 2013

TILAK RAJ ALIAS BANNAL **Appellant**
Through: Mr. J.S.Kushwaha, Advocate.

versus

STATE **Respondent**
Through: Mr. Sanjay Lao, APP

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SANJIV KHANNA, J.

1. Tilak Raj impugns judgement dated 05.09.2011 whereby he has been convicted under Section 302 of the Indian Penal Code, 1860 (IPC) for murdering his wife Rameshwari by stabbing her. By the same judgment the appellant has been convicted under Section 309 IPC for attempted suicide by consuming poisonous chemicals. By the order of sentence dated 07.09.2011, the appellant has been sentenced to life imprisonment for the offence under Section 302 IPC and a fine of Rs.10,000/- has been imposed. No separate

sentence has been imposed for the offence punishable under Section 309 IPC. However, separate directions under Section 357A Code of Criminal Procedure, 1973 (CrPC) have been passed.

2. At the outset, we may notice that in the Trial Court judgment it has been, *inter alia*, held that Vikram Singh (PW-2) and Laxmi (PW-8), deceased's brother-in-law and sister, were not eye witnesses to the occurrence. They were not present at the crime spot and had not seen the stab wounds being inflicted on the deceased. To this extent we agree with the reasoning of the Trial Court. However, it has come on record in Vikram Singh's statement (PW-2) that the accused's house was at a distance of around 100 steps from his house. Similarly, PW-8's house was located within 5 minutes walking distance from the matrimonial house of the deceased. Therefore, it cannot be denied that the said witnesses would have naturally rushed to the crime spot, immediately upon getting the information. PW-2 has deposed that on 25.09.2006 he received a telephone call from Raj Rani (PW-1), his mother-in-law, and had immediately left for the house where the deceased was residing with Tilak Raj, the appellant. Thereafter he went to Raj Rani's house, at Sita Ram Bazar, Ajmeri Gate, to inform her but learnt that she already left for the hospital. Laxmi (PW-8) has deposed that

on 25.09.2006 her mother informed her over the telephone that the appellant Tilak Raj had mauled the deceased. On the said date, PW-8 visited deceased's matrimonial home where she learnt that deceased had died.

3. Raj Rani (PW-1) in her deposition has stated that, the deceased Rameshwari married Tilak Raj, the appellant, about five years before the date of occurrence. In the initial years on several occasions when her daughter visited the parental house she had complained regarding the ill treatment, including physical violence and torture, she suffered in her matrimonial home. For the last two years the appellant had even forbidden the deceased from visiting her parental house. Somehow, on 21.09.2006, Rameshwari came to PW-1 and apprised her that the appellant was beating her frequently. PW-1 and her deceased daughter decided to go to the Police Station- Nabi Karim and they lodged the complaint (Ex.PW1/A) against the appellant. The appellant Tilak Raj was called to the Police Station and compromise was recorded (marked Ex.PW1/B). Pursuant to the compromise the deceased went back to reside with the appellant. Then on 25.09.2006, at about 8.00 P.M., two police officials came to PW-1's residence and apprised that her daughter had sustained injuries and was admitted to Lady Hardinge Hospital. When PW-1 reached the hospital she was informed that the deceased had expired due to stab injuries. Accordingly, she lodged a

complaint (Ex.PW1/C) to the Police and her statement (Ex.PW1/D) was recorded by the SDM.

4. The appellant's counsel propelled that the compromise (Ex.PW1/B) is a disputed document since it did not bear deceased's signature and this contention was rightly upheld by the Trial Court. The document (Ex.PW1/B) is signed and executed between the appellant and Raj Rani (PW-1). The appellant, in his 313 CrPC statement, has admitted that it is his signature on the said document but has contended that the signatures were obtained by the Police on a blank paper after his arrest. Even if we ignore this document, there is enough material and evidence to show that relationship between the appellant and his wife, the deceased was severely strained. The complaint (Ex.PW1/A) had been filed and this has been rightly accepted by the Trial Court. Proved DD entry No.20A (Ex.PW28/A) recorded in the Daily Diary Register fortifies this position. Evidently, after the complaint (Ex.PW1/A), Rameshwari went back to reside in her matrimonial home with the appellant. It is established that deceased died in her matrimonial home i.e. 6571, Neemwala Chowk, Nabi Karim. This would not have been possible unless there was some settlement or compromise was reached after acrimonious

dispute between the appellant and the deceased. Whether or not there was a written compromise is immaterial.

5. The appellant counsel has referred to SI Pradeep Kumar's statement (PW-14) and submitted that he was not on duty at Nabi Karim Police Station during the relevant time. Reference was made to the reply given under Right to Information Act, 2005. The question is whether SI Pradeep Kumar (PW-14) was on duty between 8 A.M. to 8 P.M. on 21st September, 2006. Even if we disregard and disbelieve the testimony of PW-14, there is enough material to show that the deceased had made a complaint Ex. PW-1/A to the police regarding beatings and cruelty inflicted on her by the appellant.

6. Document (PW1/A), i.e., the deceased's complaint, clearly accentuates differences between the appellant and the deceased. In the complaint there are allegations that the appellant after consuming alcohol beats Rameshwari. The appellant had even threatened to make the deceased and himself consume poisonous chemicals. Thus, it has been established that there was much antagonism between the deceased and the appellant and their relationship were discordant, to say the least.

7. This brings us to the most crucial question about the presence of the appellant at the scene of occurrence, that is, the matrimonial house of the deceased at about 5.30 P.M. Statements of Vikram (PW-2) and Laxmi (PW-8) show that the appellant was present at the crime spot immediately after the occurrence. The appellant does not dispute his presence in the house before the deceased was shifted to the hospital. In his statement under Section 313 Cr.P.C., he has stated as under:-

“I am innocent. I have been falsely implicated. I have no role in this case. I was not present at my residence at the time of the incident in which my wife was stabbed and on account of injuries she died. I was present in my factory at Idgah Road where I do the job of screen printing. I had received the information through a worker in a printing press which functions below my factory in the same building. He had informed me that a telephone call had been received about some mishappening at my residence. I had rushed home and found my wife in wounded condition. My family was trying to arrange an auto-rickshaw to take her to hospital. On seeing her condition, my mind stopped working. I had sat down out of shock and wanted to end my own life. I had, therefore, consumed the chemical named Nitro lying inside the house to commit suicide. I was taken to hospital by Sunil S/o my brother Man Singh in a cycle rickshaw. I have no role to play in this case.”

8. Strangely, at the same time, the appellant disputed and denied that his clothes were blood stained. The appellant went to the Lady Harding Medical Hospital and got himself admitted there for treatment at 6.30 P.M. on 25th September, 2006, vide MLC Ex.PW-24/D. Appellant's clothes were

seized on 25.09.2006, when he was admitted in the hospital, vide Seizure Memo Ex.PW25/C. The said clothes were sent for FSL examination and as per FSL Report (Ex.PX, PY and PZ) appellant's shirt and pant had human blood though the blood group could not be ascertained and FSL Report remains inconclusive.

9. It is noticeable that the appellant in his statement under Section 313 Cr.P.C. did not give name of the worker, who apparently received the call about the incident and worked in the printing press below the appellant's factory, in the same building. He has also not given the name of the person, who had spoken to that worker. Interestingly, the police got activated and came to know about the occurrence upon PCR report (Ex.PW-15/A), which was recorded on 25th September, 2006 at 5.51 P.M. The said information as recorded reads as under:-

**“POLICE CONTROL ROOM
FORM-I**

GI operator at 1922

Police Hdqrs. Bldg
I.P.Estate

DELHI POLICE

Murder

(PART I)

1. Date 25/9/06 Time 17.51 Hrs 110 C.R.D.D.No.....
2. Informant's (i)Name Man Singh (ii)Phone No. 23552577

(iii) Address 6571 Neemwala Chowk Nabi Karim

INFORMATION Brother has stabbed his wife

Ct. Mahendra Singh 2908/PCR

Recorded by

28937930”

10. Surprisingly, Man Singh and his other family members viz., Ram Swarup, Anju, Lajwanti, Chameli, Balwati and Amit were also chargesheeted and prosecuted under Section 498A/304-B and 34 IPC. In fact, Man Singh and Ram Swarup were arrested while others mentioned above got anticipatory bail. Subsequently, the said persons were discharged under Section 498A/304 IPC vide order dated 13th January, 2007, while the appellant was charged for an offence punishable under Section 302/309 IPC. The adverse affect and consequence of charging Man Singh, Ram Swarup and others is apparent when we examine the statement made by Namrata (PW-12), niece of the appellant and daughter of late Man Singh. She has deposed that on 25.09.2006 she was on the ground floor of the house when she heard noises coming from the first floor, where her aunt Rameshwari was residing. She went up and found Rameshwari lying in the *chajja* in an injured condition. In the cross-examination she denied that the appellant Tilak Raj was present on the *chajja*. She, however, admitted that Man Singh,

her father, had taken Rameshwari to Lady Hardinge Hospital. She was cross-examined by the APP and confronted with the allegations made in her statement under Section 161 Cr.P.C. but she denied having made the said allegations. However, in the cross-examination by appellant's counsel she deposed that the appellant Tilak Raj worked in a factory which was located at some distance from their residence and required at least 30 minutes to commute. She has further deposed that the incident had taken place at about 5.00 P.M. and stated that when they were taking the injured, i.e., Rameshwari, to the hospital, the appellant Tilak Raj consumed chemical. According to her Tilak Raj came to the house about half an hour of the occurrence, maybe after being apprised on the telephone by some neighbour regarding the incident. PW-12 accepts that the appellant Tilak Raj had certainly seen Rameshwari and was present in the house before she was taken to the hospital.

11. Man Singh, appellant's brother had since expired and, therefore, could not be a witness in this case. After receiving a call from Man Singh in the Police Control Room, the police van reached the spot at 1756 Hrs. Thereafter they conveyed to the Police Control Room at 6.03 P.M. that by the time they reached the spot, Rameshwari had been shifted to the hospital because she was profusely bleeding from stabbed wounds inflicted by her

husband Tilak Raj with a knife. The MLC of Rameshwari (Ex. PW-24/A), dated 25.9.2006, was recorded at 6.10 P.M. The MLC records that Rameshwari was brought by Man Singh S/o Prabhat Dayal. The patient was declared brought dead with alleged history of assault. Tilak Raj S/o Prabhat Dayal, i.e., the appellant, also came to the hospital and his MLC (Ex. PW24/B) was recorded on 25.9.2006 at 6.30 P.M. The MLC records that he himself came to the hospital with alleged history of unknown poisoning. He was conscious and oriented but was declared unfit for statement by the doctor.

11. The occurrence had taken place at about 5.00 P.M. and the complaint was made to the Police, as recorded in the PCR form (Ex.PW15/A), at about 5.51 P.M. The deceased was admitted to the hospital at about 6.10 P.M. Is it plausible and should be accepted that the appellant was not present at the spot and had learnt about the occurrence and then had reached the house and found the deceased in wounded condition? There is considerable distance between the workplace of the appellant and his residential house where the occurrence had taken place. PW-12 in her cross-examination had deposed that it required at least 30 minutes to commute. Looking at the proximity of time and distance at which the work place of the appellant was located, it would have been impossible for the appellant to be apprised of the situation

and then commute the said distance and reach the spot. Thus, in our opinion, the appellant was present at the spot at the time of occurrence. He was not at his workplace.

12. Our finding on involvement of the appellant gets support from the fact that the appellant did not accompany the deceased to the hospital. The deceased was taken to the hospital by Man Singh, brother of the appellant, who did not enter the witness box as he had expired. Constable Vikrant (PW-17) has deposed that on 25.09.2006 he joined investigation and reached the place of occurrence, i.e., 6571, Ravi Das Park but by that time the injured had been taken to the hospital. Before his arrival, PCR van had already reached the spot. No one was present in the room where the incident took place. Investigating Officer came back to the spot after 4-5 hours. Inspector Randhir Singh (PW-21) has testified that he was posted at Police Station-Nabi Karim on 25.09.2006 and at about 6.00 P.M. received a call regarding stab injuries by the husband to his wife and this information was given by Man Singh, brother of the accused. After recording the DD entry, enquiry was handed over to SI Rajbir. In the meanwhile another call was received from the hospital that one lady Rameshwari had been brought dead by her *jeth* i.e. husband's brother. He deputed Inspector Joginder Singh to go to the Lady Hardinge Hospital. In the cross-examination he deposed that he

prepared the *rukka* in the hospital in the presence of Inspector Joginder Singh, SI Rajbir Singh and the parents of the deceased. The SDM had also come and recorded the statement.

13. ASI Daya Nand (PW-22) has deposed that at about 6.02 P.M. person named Man Singh had informed, from telephone No.23552575, that one person had stabbed his wife at house 6571, Neemwala Chowk Nabi Karim. This information was recorded in DD entry 28A marked as Ex.PW3/A. At 6.15 P.M. PW-22 received information from Lady Hardinge Hospital that Rameshwari was brought dead to the hospital by Man Singh. This entry was recorded in DD No.29A (Ex.PW3/B).

14. The IO, Inspector Joginder Singh (PW-25) has testified on similar lines. He referred to the crime team visit and preparation of crime inspection report (Ex.PW25/D). He has deposed regarding lifting of bloodstained bed sheets, lifting of blood from mirror and almirah and other relevant articles from the crime spot. He also deposed regarding preparation of sketch of knife (Ex.PW4/F) etc. He has stated that the family members of the appellant including Man Singh were subsequently arrested but discharged by the court. Tilak Raj, after discharge from the hospital, made a disclosure statement and pursuant thereto bloodstained knife was recovered from the wooden plank.

He prepared sketch of this knife (Ex.PW2/D). The FSL Report on the second knife shows that human blood of Group-A, which is also the blood group of the deceased, was found on the said knife. He has further averred that the deceased had two children aged about 3-4 years at that time. Regarding the exact age of deceased's children, PW-25 was uncertain and stated that one of the children was about one or two years old. The children were not in a position to state anything.

15. Retired SI Rajbir Singh (PW-26) has stated that he had visited the scene of crime, i.e., the house in question and learnt that the injured had been taken to the Lady Hardinge Hospital. When he reached the hospital he was informed by the duty constable Om Prakash that the SHO had been informed that the injured had died. Statement of the mother was recorded by the SDM. Post mortem was conducted. Tilak Raj the appellant was arrested and his personal search was done. The clothes worn by the appellant, which had blood stains, were seized vide memo Ex.PW25/C. On 05.10.2006 Tilak Raj made a disclosure statement (Ex.PW2/C) and pursuant thereto a knife was recovered from beneath a wooden plank. The same was seized and a rough sketch of the knife (Ex.PW2/D) was prepared. As noticed above, the FSL

Report shows that knife has blood group A which was also the blood group of the deceased, were found on the knife.

16. Thus it has been established beyond doubt that the appellant was present in the house at the time of occurrence and when the deceased, wife of the appellant was stabbed. In *Trimukh Maroti Kirkan v. State of Maharashtra* (2006)¹⁰ SCC 681, it has been observed that it is extremely difficult for the prosecution to prove what happened and how the occurrence had taken place inside the privacy of a house. The law does not enjoin on the prosecution to lead evidence of such character which is almost impossible or extremely difficult to do. Illustration (b) to Section 106 of the Evidence Act was relied upon and it was observed that when a fact is especially within the knowledge of a person, the burden of proving that fact is on him. It was clarified that although initial burden to establish the case would undoubtedly be upon the prosecution but the nature and amount of evidence, to establish the charge, may be of a lesser degree or lighter character when the inmates of the house do not give cogent explanation as to how the crime was committed by keeping quiet or by offering no explanation. The traditional rule relating to burden of proof on the prosecution cannot be wrapped in pedantic coverage, ignoring the factual matrix in the case in question. It was

accordingly observed that where the prosecution succeeds in leading evidence and establishes that, shortly before the commission of the crime accused and her wife were together in the dwelling house, therefore, presence of the accused is established and no or false explanation is offered regarding how the deceased received injuries, it can be incriminating and strongly pointer towards the accused being responsible for the said offence. Reference was made to earlier judgments in *State of West Bengal v. Mir Mohammad Omar* AIR 2000 SC 2988, wherein it has been observed as under:-

“The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the Section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference”

17. In *Sanjay Anand vs. State* in Crl. A. 861/2004, decided on 23rd March, 2010, reliance was placed upon decision of the Supreme Court in *Dasari Siva Prasad Reddy v The Public Prosecutor, High Court of A.P.* AIR 2004 SC 4383 and *Siddaiah @ Sundi v State of Karnataka* JT 2002 (6) SC 477, and it was submitted that ratio of the said decisions is contrary to

the ratio in *Mir Mohammad's case* (supra) and *Trimukh's case* (supra). The Division Bench observed that there were fundamental differences in the facts of *Siddaiah's case* (supra) and the case before them relating to conviction of Sanjay Anand. In *Siddaiah's case* (supra) there was no evidence that the accused was present in the afternoon when the deceased died whereas in the case before the Court, the accused had admitted his presence. Accordingly, it has been held by the Division Bench in *Sanjay Anand's case* (supra) that when the deceased had a homicidal death in the house, which was in possession and occupation of the accused, some explanation was required from the accused when it was established that the accused was present and there were no signs of forced entry or presence of intruder and his conduct was otherwise suspicious. *Dasari's case* was distinguished on the ground that the evidence did not give rise to irresistible inference that the accused therein was present in his house at the time of death of the deceased and the accused must have alone committed the murder. In the said case, the Division Bench convicted the accused after noticing that conclusion of facts raised reasonable inference that the appellant had murdered the deceased therein.

18. To reiterate, in the present case, presence of the appellant in the house, at the time of occurrence, is established. It is a fact that the deceased

had died in her matrimonial house, where the appellant was present, and had been subjected to injuries by sharp edged weapon. It was the brother of the appellant, Man Singh, made a phone call to the police and had taken the deceased to the hospital where she was declared brought dead. The report/information received by the Police Control Room at 17.51 hours from Man Singh from landline number 23552577 that at “6571, Neem Wala Chowk, Nabi Karim, Bhai ne apni patni ko chaku maar diya” (my brother has killed his wife by stabbing her with knife) speaks for itself. On receipt of this message, the PCR van reached the spot, within five minutes, and informed the control room that neighbours had informed that Rameshwari aged 25-26 years residing at the said address has been assaulted by her husband Tilak Raj and has been taken to the hospital by Tilak Raj’s brother i.e. Man Singh. Therefore, it is discernible that the appellant did not take the deceased to the hospital and did not inform the police. In fact, after the incident, the appellant took poisonous chemical and was taken to the hospital. The fact that Man Singh had taken deceased Rameshwari to the hospital is proved from the MLC (Ex.PW-24/A) recorded at 6.10 P.M. on 25.9.2006. PW-12, niece of the appellant did not name any third person as perpetrator. She accepts that she was present at the spot i.e. the matrimonial house of the deceased at the time of occurrence with her father Man Singh.

Neither does the appellant name any third person, who would have perpetrated the said crime. Therefore there is no indication of presence of any third person or any intruder having entered the property or having caused injuries to the deceased. There is the disclosure statement of the appellant recorded after he was discharged from the hospital on 5.10.2006 and arrested vide memo (Ex.PW-2/A). He had disclosed that the knife by which he had murdered his wife was concealed underneath the wooden fatta. Pursuant to the disclosure statement, the appellant led the police party to the room and one knife was recovered from underneath the wooden plank and same was seized vide memo (Ex.PW-2/EA). As per the FSL report (Ex. PY) human blood of Group A was found on the knife and this tallies with the blood found on the blood stained gauze, bed sheet, blood stained cotton and cotton wool swab. There is enough material to show that there were sharp differences between the appellant and the deceased and their relationship was severely strained. The previous complaint made by the deceased (Ex. PW-1/A) makes serious allegations against the appellant including several attempts made by the appellant to commit suicide and kill Rajeshwari. This constituted the motive. The Post Mortem Report (Ex.PW-20/A) of the deceased Rameshwari shows that she had multiple stab injuries and total of 17 such injuries have been inflicted. It is a murder committed in utmost

gruesome and brutal manner and it would have taken time to inflict the said injuries.

19. In these circumstances, we accept the prosecution version and uphold the judgment of the trial court. Conviction and sentence are maintained.

**SANJIV KHANNA
(JUDGE)**

**SIDDHARTH MRIDUL
(JUDGE)**

FEBRUARY 7th, 2013
Mk/NA/kkb