

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

% *Judgment Reserved on: September 15, 2014*
Judgment Delivered on: September 17, 2014

+ **CRL.A. 152/2014**

AMIT KUMAR

..... Appellant

Represented by: Mr.S.B.Sharma, Advocate with
Mr.Kuldeep Singh, Advocate.

versus

STATE

..... Respondent

Represented by: Mr.Lovkesh Sawhney, APP for
the State.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Amit Kumar is aggrieved by the judgment dated September 24, 2013 convicting him for offences punishable under Sections 302 IPC and 25 Arms Act for the murder of his wife Shalu and the order on sentence dated September 30, 2013 whereby he has been directed to undergo imprisonment for life and to pay a fine of ₹10,000/- and in default of payment of fine to further undergo Simple Imprisonment for six months for offence punishable under Section 302 IPC and imprisonment for six months and to pay a fine of ₹1,000/- and in default of payment of fine to further undergo Simple Imprisonment for one month for the offence punishable under Section 25 Arms Act.

2. Learned counsel for Amit Kumar assails the impugned judgment on the ground that in the incident Amit Kumar was also affected as he was unconscious for quite some time. Amit had no role to play in the incident as

he was travelling with Shalu and their young son while the incident took place. Before he could realise what had happened he fell unconscious. There is no recovery of weapon of offence at the instance of Amit Kumar. The recovery of one live and one empty cartridge at the instance of Amit has been falsely foisted on him. The family of Shalu has falsely implicated Amit. They have not been able to prove the motive. In the absence of any evidence to connect Amit Kumar with the offence committed the conviction cannot be sustained. Hence Amit Kumar be acquitted.

3. The case of the prosecution is that on April 10, 2012 at about 8.45 PM DD No.34/A was received at PS Chhawla from the PCR informing that an injured, after the accident, has been admitted in Balaji Hospital. The same was handed over to ASI Paras Kumar, PW-3 who reached the Balaji Hospital. Another call was received from Balaji Hospital at 10.05 PM which was recorded vide DD No.38/A informing that Shalu wife of Amit, resident of Village Tajpur Khurd has been admitted in the hospital with the history of road traffic accident. ASI Paras Kumar reached the hospital and was informed that Shalu wife of Amit Kumar, aged 24 years was brought dead. The MLC noted by the doctor stated alleged history of road traffic accident. It was also informed that one another person in the accident Amit Kumar, son of Ram Mehar was given first aid and has been sent to Ayushman Hospital, Sector-12, Dwarka. Since no eye witness was available FIR under Sections 279/337/304 IPC was registered on the basis of the history given in the MLC. The spot was inspected and photographed and motorcycle which was alleged to have met with the accident bearing DL4S-BL-1436 was taken into possession. The father of the deceased Ashok expressed his doubt about the death of his daughter and demanded the post-

mortem from other hospital. Consequently the body was preserved and a Board was constituted for conducting the post mortem.

4. The Board of doctors consisted of Dr.Sunil PW-26, Dr.Akash Jhanjee PW-30 and Dr.Vinay Kumar Singh PW-34 conducted the post mortem. They exhibited the report vide Ex.PW-26/A and noted the following injuries:

“EXTERNAL EXAMINATION

1) Firearm entry wound present in the form of a nearly oval shaped contused laceration, 2.5 cm x 0.9 cm over the left parieto-temporal region of scalp, 3 cm above the upper helix of left ear. The edges were irregular, contused and inverted. Blackening, 2 burning, stippling of the surrounding skin was present.

Track of the projectile: The projectile traversed through the scalp layers causing extensive extravasation of blood in them. There was a 2.7 cm x 1.1 cm defect of the left temporal bone. On the inner aspect of the temporal bone the entry hole/defect was present having an irregular oval shape. Underneath it, a chip of inner table of temporal bone which was adherent to the dura was found inverted and embedded in the brain matter, this could be removed to reveal a rent/defect in the dura through which pulped brain matter was exuding out. The projectile had penetrated the dura through the same dural defect as mentioned above, and then entered the brain at the lateral surface of left cerebral hemisphere (temporal lobe) causing a 2.9 cm x 1.6 cm sized cortical laceration and passed through the sub cortical white matter of the left temporal lobe causing extensive damage of the brain parenchyma. It then entered the medial surface of right cerebral hemisphere. The projectile then traversed through the outer table of the right parietal bone, and exited it with bevelling of the outer table. The projectile then exited and head causing a 2) firearm exit wound of size 3 x 1.2 cm, situated 6 cm above the upper helix of the right ear. The edges of exit wound was irregular and everted.

The track of the bullet within the head is directed obliquely slightly upward and from left to right.”

5. The doctors opined the cause of death to be due to cranio-cerebral damage consequent upon firearm injury to the head via injury Nos.1 and 2. All injuries were ante-mortem in nature. Injury Nos.1 and 2 were caused by ammunition of firearm and sufficient to cause death in ordinary course of nature. Range of firearm was near contact. Nothing material could be elicited from the cross-examination of PW-26, PW-30 and PW-34.

6. It was thus clear that Shalu died a homicidal death and not accidental death thus Section 302 IPC was added in the FIR. On interrogation Amit disclosed that since he suspected his wife he brought her on motorcycle on the pretext of providing her medicines and after getting her checked up from the doctor, he committed the offence near the school whereafter he threw the revolver in the boundary wall of the Primary School in the bushes and took the deceased in his lap due to which his clothes were stained with blood and made a call to his father for help. Thereafter he fainted and regained consciousness on the next day in the afternoon when he found himself admitted in the Ayushman Hospital. Pursuant to the disclosure statement, he got recovered from the first floor of his house the receipt/delivery note of Samsung Fridge, one coloured chadar/bed sheet, one Nokia phone and polythene bags from the room on the ground floor. He also got recovered one live cartridge and one fired cartridge.

7. Statements of parents of the deceased and Sunil Kumar, a family friend with whom Amit suspected illicit relations of his wife were also got recorded. Statement of Dr.Ram Singh PW-21, whose dispensary Amit

Kumar had visited on April 09, 2012 and Dr.Sanjay Sharma PW-9, where he had visited on April 10, 2012 at around 7.30-7.00 PM were recorded. On April 12, 2012 during lunch hours student Sachin PW-11 noticed a country made pistol in the bushes near the wall of the MCD Primary School and handed over the same to Yogesh Kumar PW-10, a teacher in the school. As per the FSL report prepared by Puneet Puri PW-32 vide Ex.PW-32/A the cartridges recovered at the instance of the appellant Amit were fired from the country made pistol which was found by the student Sachin in the bushes near the wall of the MCD Primary School.

8. Ashok Kumar, father of the deceased PW-14 stated that on April 10, 2012 at about 9.00 PM he received a call from Shri Ram Mehar informing that his daughter and her husband had met with an accident and called him at Balaji Hospital. When he reached the hospital he found his daughter had expired and his son-in-law had been referred to Ayushman Hospital. He came to know that his daughter and his son-in-law had fallen from the motorcycle near the Primary School, Village Tejpur Khurd and in that accident his daughter had expired. He further stated that his daughter was married with Amit in the year 2007. Initially everything was alright for 1½ years and thereafter his daughter used to tell him that Amit had illicit relations with other ladies and he used to beat her but due to fear of the society they did not complain anywhere. Amit had demanded a washing machine and a fridge. He asked his nephew to give a fridge as he had no money at that time and that he would give fridge in the marriage of his nephew's daughter. He further stated that six months prior to the incident Amit had caused injuries on the head of his daughter and told him that she had fallen from the stairs and thereafter Amit had taken claim from the

insurance company. His suspicion arose when he came to know that neither Amit nor his son Ansh had received any injury on their body. He also deposed that on the next day of incident he received a phone call from the maternal uncle of Amit who stated that Amit had actually murdered his daughter by gunshot and thus he requested the Investigating Officer to get the post-mortem conducted through a Medical Board. He also stated that Amit used to demand money and when he failed to fulfil the demand he used to beat Shalu.

9. Smt.Chhabina PW-20, mother of the deceased Shalu has also deposed in sync with her husband. The version of Ashok Kumar regarding giving of fridge to Amit is corroborated by the evidence of PW-2 Kailash Kumar who delivered the fridge in the house of Amit on April 04, 2012, Sunil Kumar who had got arranged the refrigerator from a shopkeeper in his name and sent the same to the house of Amit and Vinod the shopkeeper. Sunil Kumar further stated that his uncle i.e. Ashok Kumar asked him to pay the instalments and that he would give refrigerator in the marriage of his daughter.

10. The conduct of the accused after the homicidal death of Shalu is of misleading the doctors and the investigating agency as is apparent from the testimony of PW5 Dr.Kuldeep who prepared the MLC of Shalu at Balaji Hospital and exhibited the same as Ex.PW-5/A. Dr.Kuldeep deposed that on April 10, 2012 at about 8.35 PM one Shalu wife of Amit aged about 24 years was brought to the hospital by Shri Amit. The patient was examined in the hospital and was declared brought dead vide MLC Ex.PW-5/A which bore his signatures and the dead body was handed over to the Police. On cross-examination Dr.Kuldeep Singh stated that deceased Shalu was brought

by 2-3 persons to the hospital and both persons had told him that deceased Shalu was wife of accused Amit who was also present in the hospital. On a Court question he identified appellant Amit Kumar as the person accompanying the dead body to the hospital and was stated to be the husband of the deceased by other persons. He categorically denied that Amit Kumar was in unconscious state when he came to the hospital. He clarified that Anil was accompanying the deceased along with Amit.

11. Anil Kumar whose name is mentioned in the MLC of the deceased as the person accompanying him was examined as PW-17. He deposed that at about 8.00 PM he received a call from his uncle Ram Mehar that his cousin had met with an accident. He went near the school where he found Amit with his wife in his lap and his son also there. After seeing them Amit became unconscious. It is thus evident that till the time Anil reached the place of occurrence Amit was conscious.

12. Amit got himself admitted in Ayushman hospital Dwarka. A perusal of the MLC of Amit would show that though the patient is stated to be brought to casualty in unconscious state with history of road traffic accident near Primary School Tajpur and wife of the patient dead on the spot and loss of consciousness by patient as told by the attendant Sunil, there were no marks of external injury on his body. The blood pressure of Amit Kumar was 100/80, Pulse was 80 per minute, temperature was normal and all the vitals were stable. Dr.Akash Jain PW-18 the Consultant under whom he was admitted has described the case as that of psychogenic shock. Though in cross-examination Dr.Akash Jain stated that patient was unconscious till morning. A perusal of the case sheet shows that at 8.00 AM on April 11, 2012 Amit was conscious but not speaking. One fails to understand having

admitted his wife at Balaji Hospital at Deenpur near Najafgarh what prompted Amit to go to another hospital to a distant place at Dwarka and get himself admitted. From the evidence of Dr.Kuldeep it is evident that when Amit reached Balaji Hospital he was conscious thus thereafter all this evidence was being faked up to cook the story of accident.

13. Pursuant to the Amit being arrested he got recovered one empty and one live cartridge from the room at the first floor from inside the box of the bed-cum-dewan from below the clothes. The same were sent to the FSL along with the revolver recovered from the bushes of the Primary School and handed over by Yogesh Kumar PW-10. Master Sachin the child PW-11 who found the country-made pistol lying in the bushes has deposed that on April 12, 2012 in the lunch time when he was playing with his friends behind the wall of the school at about 10.40 AM he noticed one country made pistol lying in the bushes. He picked up and handed over the same to Shri Yogesh Kumar. He identified the country-made pistol as the one which he had recovered from the bushes. This witness has not been cross-examined and thus his testimony has gone unchallenged.

14. As per the FSL report Ex.PW-38/Q the individual characteristic of firing pin marks and breech face marks present on evidence fired cartridge case marked 'EC2' and on test fired cartridge cases marked as 'TC1' & 'TC2' on examination and comparison under the comparison microscope were found to be identical. It was thus opined that evidence fired cartridge case marked Ex.'EC2' has been fired through the country made pistol .315" bore marked Ex.'F1'.

15. Shri M..N.Vijayan, PW-33, Nodal Officer proved the records relating to mobile No. 9278392575 (in the name of Ms. Madhu W/o Vir Singh),

mobile No. 9213767180 (in the name of Mr.Sunil Kumar, S/o Rattan Singh), mobile No. 9289526516 (in the name of Mr.Ram Mehar S/o Jai Lal) and mobile No. 9289833063 (in the name of Mr.Amar Kumar S/o Ashok Kumar). As per the disclosure statement Amit was unhappy with his wife's relation with Sunil PW-1. A perusal of the mobile phone records of Sunil and Shalu which was in the name of her father-in-law Ram Mehar show frequent and a large number of calls every day and for long durations. Moreover, it has also been admitted by Sunil that the refrigerator in the house of Amit and Shalu was sent by him on April 04, 2012 which obviously would not have been liked by Amit Kumar.

16. In his statement under Section 313 Cr.P.C. Amit has taken the following plea:

“I am innocent. At the time of incident, when I reached near school, one person suddenly came in front of my motorcycle and that person put some revolver type object in front of my son and suddenly I heard a noise like cracker or blast and then my wife fell down from the motorcycle. I saw that those persons had already run away from there. One of them was in muffled face and another was wearing half T-shirt of black colour. I had told all these facts to the I.O. I had also told these facts to Tehsildar (Executive Magistrate) on 14.4.12. Police did not take any action against the actual culprit.”

17. However, this explanation of Amit is not born from the record as admitted by Anil, the relation of Amit that when they reached Amit and his wife they found Amit to be conscious. Thus the story of road traffic accident was in order to mislead the facts. The gun shot injury to the deceased was from a close range in view of the blackening and has gone upwards. Thus the same has not been fired by a passer-by as is sought to be

put up in the explanation under Section 313 Cr.P.C. The three defence witnesses examined by Amit are for the purpose of showing that Amit and his wife were residing peacefully and had no quarrel. However, in view of the overwhelming evidence on record general conduct is not relevant.

18. From the evidence on record the prosecution has proved beyond reasonable doubt that Amit committed the murder of Shalu by gun shot injury and hence the judgment of conviction and order on sentence are upheld.

19. Appeal is accordingly dismissed. The appellant who is in custody will suffer the remaining sentence.

20. T.C.R. be returned.

21. Two copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other to be handed over to the appellant.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 17, 2014
‘vn/ga’