

\$~6

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: November 03, 2014

+

CRL.A. 178/2013

NARENDER SINGH RAWAT

..... Appellant

Represented by: Mr.Joginder Tuli, Advocate with
Mr.Tarun Nanda and Mr.Ashu
Sharma, Advocates

versus

STATE

..... Respondent

Represented by: Ms.Aashaa Tiwari, APP
Insp.Dinesh Kumar Sharma,
PS Mahindra Park

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. Narender Singh Rawat has been held guilty of having murdered his wife Sunita. The incriminating evidence relied upon against Narender Singh Rawat is the testimony of Shakuntala PW-3, the wife of the brother of Sunita who was an eye witness. The motive has been held proved through the testimony of Shakuntala and Abhishek PW-4, the son of Narender Singh Rawat and his deceased wife. Clothes which Narender Singh Rawat was wearing when the crime was committed on which human blood of group 'B' was detected has been held to be further incriminating evidence and lastly a hammer got recovered by the appellant which was capable of inflicting the injuries on the skull of the deceased which led to the bones being broken and

embedded in the dura-matter is the additional incriminating circumstance relied upon.

2. Narender Singh Rawat challenges his conviction alleging that the testimony of Shakuntala is unworthy of credence and that the recovery of the hammer from an open space after one month and thirteen days of the crime is a useless recovery. In the absence of the FSL Report linking the group of the blood detected on the shirt and the pant recovered from the bag with the appellant when he was apprehended to that of the deceased, it is urged that the last incriminating circumstance relied upon by the learned Trial Judge is wrong.

3. As regards the last plea, the argument overlooks the fact that the FSL report Ex.PW-28/E has categorically opined that human blood of group 'B' was detected on the karni, pieces of wood planks and a dupatta seized from the scene of the crime, which blood was obviously that of the deceased. Further, human blood of group 'B' was detected on the brassiere which the deceased was wearing when she was killed as also on the gauze cloth piece handed over by the doctor who conducted the post-mortem of the deceased. Thus, it is apparent that the prosecution has proved that blood group of the deceased was 'B' and thus the argument as advanced is worthy of no credence, but as would be reasoning hereinafter, we would be overlooking the evidence concerning a pant and the shirt recovered from the bag, as claimed by Insp.Dinesh Kumar Sharma PW-28, which the appellant was carrying with him when he was apprehended.

4. But all this hardly matters if the testimony of Shakuntala, who claims to be an eye witness, is believed.

5. The FIR Ex.PW-1/A has been registered at PS Shakarpur on

November 11, 2009 pursuant to the statement Ex.PW-3/A made by Shakuntala to SI Nirmal Kumar Jha PW-11. The statement has been dispatched from Lal Bahadur Shastri Hospital where Shakuntala met Nirmal Kumar Jha and where Sunita had been brought in an injured condition. Shakuntala told Nirmal Kumar Jha that the appellant had caused the injuries on his wife as a result of which she died. That the crime took place around 3:15 PM is not disputed by learned counsel for the appellant for the reason PCR Form Ex.PW-15/A proved by W/Ct. Savita PW-15 records information received at the PCR at 3:23 PM on November 11, 2009 of a quarrel taking place at House No.S-621A, Nehru Enclave, Near Akshardham Flyover which was conveyed at PS Shakarpur and recorded by HC Nisha Kapoor PW-16 vide DD No.26A, Ex.PW-16/A at 3:30 PM.

6. Shakuntala PW-3 resides in House No.621A, Nehru Enclave, Shakarpur, which is one house away from that of the appellant and the deceased. Her presence in the vicinity is thus natural. We see hardly any scope for an argument to be advanced that Shakuntala is a planted witness. The rukka has been dispatched from the hospital by 6:00 PM.

7. The testimony of Shakuntala shows that the appellant was a worthless unemployed person, prone to heavy drinking, and he used to beat his wife virtually every day demanding money from her and the unfortunate deceased was the one who used to earn the bread and butter for the family. Even appellant's son Abhishek has deposed that his father used to earn nothing and used to daily drink and beat his mother. He even used to beat him. The learned Trial Judge has noted a scar on the forehead of Abhishek which was the result of an injury caused by the appellant. As per Shakuntala, she was in her house when a neighbour informed her that the

appellant was beating Sunita. She rushed to the house where appellant resided with his wife and saw appellant beat Sunita with a karni (a tool used by masons to plaster the walls). She rushed to her house and called her daughter Kavita aged 21 years and on return saw Sunita in a pool of blood and the appellant nowhere to be seen. We do not note further testimony of the witness concerning her participation in the various exhibits seized by the Investigating Officer who came to the scene of the crime later on.

8. Nothing has been brought out worthy of being noted in the cross-examination of the witness by learned counsel for the appellant which could discredit Sunita.

9. Except to urge that Sunita is not a credible witness, learned counsel can take the argument no further and the only worthwhile argument to be noted is that broken bricks were seen where Sunita ultimately fell on being injured to urge that the injuries could be the possible result of a fall.

10. The argument overlooks the fact that the photographs of the scene of the crime : Ex.PW-13/B1 to Ex.PW-13/B9, would show that blood is splattered in the room which was the matrimonial house of the deceased and the appellant and in which photographs a karni can be seen. The broken bricks are at the landing of the staircase and it is obvious that as the injured deceased ran on being injured inside her room, she could run no further beyond the landing of the staircase, where some broken bricks were lying. Further, the post-mortem report Ex.PW-25/A authored by Dr.Vijay Kumar PW-25 would bring out that injuries No.5 and 6 on the person of the deceased could have been caused only by a karni, as against injuries No.1, 2, 3 and 4 which could possibly be caused by a karni if hit on the head from the wooden handle side and by the hammer i.e. the resultant injuries if a blunt

object is struck on the head. Since injuries No.5 and 6 could be caused only by the karni, it is apparent that the karni was used as one weapon of offence and the other was a blunt object.

11. The testimony of Abhishek PW-4, with respect to which it is urged that the same is useless because Abhishek has not claimed to be an eye witness, brings out that the appellant was present in the house along with his wife and Abhishek. Since morning the appellant was demanding money from his wife and had beaten her. By 2:00 PM the atmosphere was fairly surcharged and the deceased feared that the appellant would beat their son and thus she requested him to go to his mama's house. The testimony of the son establishes two things : (i) the appellant was present in the house with his wife at 2:00 PM; and (ii) the appellant was in a highly charged up state of mind, he had beaten his wife and there was a looming fear of he even hitting his son.

12. As noted above the crime was committed somewhere around 3:15 PM.

13. Now, if the appellant was present in his house, he has to explain how his wife was grievously injured.

14. The appellant has not explained so, except to urge that his wife received the injuries when she fell on the bricks. We note that this is not the appellant's version when he was examined under Section 313 Cr.P.C. This version has been brought out in appeal.

15. We have reasoned above as to why the deceased could not have suffered the injuries if she fell on bricks. The reason given above by us is that injuries No.5 and 6 could not have been caused by a blunt object. As regards injuries Nos.1, 2, 3 and 4, as noted above, the post-mortem report

shows that the bones in the skull were broken into pieces and embedded in the brain matter. This is only possible if a hammer like object is struck on the head with force, not when one falls on bricks. Further, as noted above, the bricks were at the landing space of the staircase and the brutal and fatal assault has taken place inside the room where no bricks were lying.

16. If the percipient evidence of Shakuntala is to be believed, which we do, it is an open and shut case against the appellant for the reason the motive for the crime is the deceased not giving money to the appellant to purchase alcohol and he retaliating. That the appellant caused the injuries to the deceased is proved through the testimony of Shakuntala. That the appellant absconded is also incriminating evidence. We note that the appellant was arrested on December 24, 2009. That the hammer Ex.P-1 got recovered by the appellant was opined as capable of causing injuries No.1, 2, 3 and 4 on the deceased and human blood of the same group as that of the deceased was detected on the pant and the shirt recovered from the bag which the appellant was carrying when he was apprehended is overlooked by us for the reason the hammer was recovered from an open space accessible to one and all and there is some merit in the argument that the appellant would not be expected to be moving around with a pant and shirt which was stained with blood for over one month.

17. Before bringing the curtains down we need to pen a few words concerning the law for the reason we find some very wide observations made by the learned Trial Judge in the impugned decisions, which are not a correct reflection of the legal position. We find said reasoning in other decisions as well. On the facts of each case we have been taking corrective action, but we need to put forth the law with clarity.

18. Irrespective of the fact whether prosecution has proved that the husband was present in the house, in many cases where the deceased is the wife, in the absence of the husband rendering an explanation as to on the what circumstances his wife died, relying upon Section 106 of the Evidence Act, learned Judges are raising a presumption against the husband to convict the husband.

19. In the instant case the prosecution has proved that the husband was present in the house when his wife suffered the injuries and thus on the facts of the instant case the learned Trial Judge has rightly raised the presumption against the appellant and hence one more incriminating evidence against the appellant. But as noted above, with the wide observation that being the husband since appellant did not explain the circumstances under which his wife received the injuries, the Court would be entitled to presume his guilt.

20. If we examine the decisions of the Supreme Court on the point of death of a wife in her matrimonial house, we find that the decisions can be classified into undernoted 4 broad categories:-

I. In the first category fall the decisions where it is proved by the prosecution that the husband was present in the house when the wife suffered a homicidal death and rendered no explanation as to how his wife suffered the homicidal death. (See the decisions reported as State of Rajasthan v Parthu (2007) 12 SCC 754, Amarsingh Munnasingh Suryavanshi v State of Maharashtra AIR 2008 SC 479, Ganeshlal v State of Maharashtra (1992) 3 SCC 106, Prabhudayal v State of Maharashtra (1993) 3 SCC 573, Dynaneshwar v State of Maharashtra (2007) 10 SCC 445, Trimukh Maroti Kirkan v State of Maharashtra (2006) 10 SCC 681,

Bija v State of Haryana (2008) 11 SCC 242 and State of Tamil Nadu v Rajendran (1999) 8 SCC 679).

II. In the second category are the decisions where the prosecution could not prove the presence of the husband in the house when the wife suffered a homicidal death but the circumstances were such that it could be reasonably inferred that the husband was in the house and the husband failed to render any satisfactory explanation as to how his wife suffered a homicidal death. The circumstances wherefrom it could be inferred that the husband was in the house would be proof that they lived in the house and used to cohabit there and the death took place in such hours of the night when a husband was expected to be in the house i.e. the hours between night time and early morning. (See the decisions reported as State of UP v Dr Ravindra Prakash Mittal (1992) 3 SCC 300 and Narendra v State of Karnataka (2009) 6 SCC 61).

III. In the third category would be proof of a *very strong motive* for the husband to murder his wife and proof of there being a reasonable probability of the husband being in the house and having an opportunity to commit the murder. In the decision reported as Udaipal Singh v State of UP (1972) 4 SCC 142 the deceased wife died in her matrimonial home in a room where she and her husband used to reside together. The accused-husband had a very strong motive to murder the deceased which was evident from the letter written by him to his mistress, which letter clearly brought out the feeling of disgust which the accused had towards the deceased. The accused had the opportunity to commit the murder of the deceased as there was evidence to show the presence of the accused in the village where the house in which the deceased died was situated at the time of the death of the deceased. Noting

the facts that the accused had a strong enough motive and an opportunity to murder the deceased, noting that there was no evidence that the appellant was seen in his house by anybody, the Supreme Court convicted the accused.

IV. In the fourth category are the decisions where the wife died in her matrimonial house but there was no evidence to show presence of the husband in the house at the time of the death of the wife and the time when the crime was committed was not of the kind contemplated by the decisions in category II and was of a kind when husbands are expected to be on their job and there was either no proof of motive or very weak motive being proved as in the decision reported as *Khatri Hemraj Amulakh v State of Gujarat* AIR 1972 SC 922 and *State of Punjab Vs. Hari Kishan* 1997 SCC Cri. 1211.

21. A feeble attempt has been made to argue that the offence committed by the appellant is not murder but culpable homicide not amounting to murder and for which learned counsel urges that the testimony of Abhishek would establish that there was a quarrel between the husband and the wife before the assault commenced.

22. A quarrel has an element of mutuality. If an idle useless husband, prone to excessive alcohol, beats his wife everyday and makes her toil to earn the bread and butter for the family and additionally for his alcohol, on being refused by the wife on a day she did not have spare money would not be a case of a quarrel which is envisaged by law as a factor which mitigates the offensive homicidal act from one of murder to culpable homicide not amounting to murder.

23. The second string to the bow is that the nature of injuries would evince only a desire to injure and not cause death, but since death has resulted, knowledge at best can be attributed to the appellant of knowing that he is likely by such act to cause death.

24. The argument is an attempt to catch on to straw.

25. The post-mortem report, as noted above, would show that a blunt object was picked up and repeatedly struck on the head of the deceased breaking the skull bone with such force that the resultant damage went beyond the bones being fractured; the bones were broken into pieces and embedded in the brain matter inside.

26. The appeal is dismissed. The conviction for having murdered his wife and the sentence to undergo life imprisonment is maintained.

27. TCR be returned.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

NOVEMBER 03, 2014

mamta