

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

% *Judgment Reserved on: August 20, 2014*  
*Judgment Delivered on: August 26, 2014*

+ **CRL.A. 263/2014**

ARJUN PANDIT

..... Appellant

Represented by: Mr.Manoranjan, Advocate with  
appellant in custody.

versus

STATE

..... Respondent

Represented by: Mr.Varun Goswami, APP with  
SI Rajender Singh PS Shalimar  
Bagh.

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**MUKTA GUPTA, J.**

1. Arjun Pandit is convicted for the offence of murder of Anita Gupta on the strength of recovery of weapon of offence i.e. dagger and the gold chain of the deceased vide judgment dated November 12, 2013. Vide order date November 25, 2013 Arjun Pandit has been directed to undergo imprisonment for life and a fine of ₹ 5000/- and in default of payment of fine to further undergo simple imprisonment for 6 months. He has also been directed to pay ₹ 1 lakh as compensation to the legal heirs of the deceased and in default of payment of compensation, to undergo 6 months simple imprisonment.

2. Learned counsel for the appellant assails the judgment on the ground

that the entry in the house is friendly as is apparent from the evidence on record. Merely on the ground that a shirt stitched by Taj Tailor Jalesar was found on the spot, the appellant cannot be implicated. The recovery of the shirt was not incriminating towards the appellant. No witness has been produced to state that the appellant was wearing the shirt stitched by Taj Tailor Jalesar. The case of the prosecution rest on the alleged recovery. There are contradictions in the testimony of the witnesses as to the place of recovery of dagger. The time of arrest of the appellant is also doubtful and hence the prosecution case is full of doubts. Since the appellant has been acquitted of the charge for offence under Section 392 read with Section 120B IPC and Section 397 read with Section 120B IPC, the alleged recovery of gold chain at the instance of appellant cannot be used against him. There is no material on record to connect that the injuries on the deceased could have been caused by the alleged dagger recovered at the instance of Arjun Pandit.

3. Heard learned counsel for the parties and perused the record. The investigation was set into motion on receipt of DD No. 19-B Ex.PW-8/A recorded at 9.35 AM on July 17, 2010 at PS Shalimar Bagh that at AN-31A, Shalimar Bagh, DDA Flats one lady was lying at the house without clothes and having cut throat. Additional SHO Inspector Kanwar Singh Yadav PW-27 along with SI Baljeet Singh PW-13 and Constable Abhimanyu PW-24 reached the spot where Krishan Kumar Gupta PW-7 the brother of the deceased was present. He informed that Anita was residing at House No. AN-31A. On July 17, 2010 at about 9.15/9.20 AM while going to his shop he reached in front of the house of his sister. He saw that the main gate was not locked so he thought that his sister would be inside the house. Hence he

rang the door bell, but his sister did not come out, on which he tried to push the door to check whether it was locked from inside or not and he went inside. His sister Anita was lying on bed in naked condition and her throat was cut. There were injury marks on her breast also. The almirah was open and articles were lying scattered. Blood was lying near the dead body. So he gave information to the Police as well as his niece Preeti Arora (PW-3), married daughter of his sister. Crime team was called and the scene of occurrence was photographed. From the spot Police collected one blood stained handkerchief, one blood stained shirt, one gents underwear, bunch of hair and broken pieces of bangles, ball pen, one dibba, two packets of condom and blood stained bed sheet. They also took into possession wrist watch, two bangles and one ring which was on the body of the deceased.

4. The daughter of the deceased Preeti Arora informed that on July 15, 2010 she attended the birthday of her mother. At that time her mother was wearing gold chain with locket, pair of tops, two finger rings, two bangles, nose pin and one wrist watch. Thus, the gold chain, pair of tops and nose pin were found missing as also one mobile phone. The body was sent for post-mortem.

5. As per PW-9 Dr. V.K. Jha the following injuries were observed:

*“External examination*

1. *Cut throat injury extending from right side of neck 7 cm below right ear lobule to mid of neck of size 14 cm x 3 cm x cavity deep.*

2. *Incised wound extending from mid of sterna to left nipple on front of chest of size 10 cm x 3 cm x chest cavity deep.*

*On internal examination, head was normal. On neck and dissection of injury No.1, it has cut in skin, muscle, vessels, trachea, front of chest through and through and trachea was*

*pulled apart. Blood and blood clots were present. The injury was placed below the level of adam's apple. On internal examination of chest and dissection of injury No.2, it has cut in skin, muscles of 5<sup>th</sup> inter coastal space entered the chest cavity and cut the paricardum and entered the left ventricle of heart. Blood and blood clots were present."*

6. Dr. V.K.Jha exhibited the post-mortem report Ex.PW-9/A and opined the cause of death as hemorrhagic shock as a result of cut throat injury and injury to the heart as a result of stab wound inflicted by other party. According to him all injuries were ante-mortem in nature. The time since death was 48 hours. During his testimony in the Court he was also shown FSL report 2010/V-4329 dated May 07, 2011 whereby the vaginal report showed the presence of semen. Thus he opined that the vaginal swab report was consistent with sexual intercourse before death. No subsequent opinion was taken from Dr. V. K. Jha that the injury was possible by the dagger recovered.

7. Preeti Arora PW-3 informed that her mother was having two mobile phones one Tata having No. 9266365261 and the other of Reliance having No. 9350385814. Krishan son of Jagbir Singh PW-18 appeared in the witness box and stated that phone No. 9266365261 was on his ID and he had handed over the same to Anita. Call details of mobile No. 9350385814 of deceased and of another mobile No. 9811683932 of which there were incoming and outgoing calls from the phone of the deceased were collected. The user of mobile No. 9811683932 who had made a call on mobile number was in touch with mobile No. 9718663382. As per the location the address of the user was found to be of Prem Nagar, Kirari.

8. The Police reached house No. G-32 Prem Nagar, Kirari where they

met 'R' juvenile. Enquiries were made from him who told that this mobile was of his father and he was using the same. He further told that mobile No. 9811683932 was of his friend Sunny Khatri and he used to talk with Sunny Khatri. On July 16, 2010 he also talked with Sunny Khatri. The disclosure statement of juvenile was recorded where he revealed the facts. Pursuant to the disclosure of juvenile one mobile phone without battery and without SIM of Tata company was recovered which was duly seized.

9. SI Baljeet Singh deposed that on August 25, 2010 he also joined the investigation with the investigating officer and on that day they along with HC Jai Bhagwan reached Kirari, Prem Nagar in search of accused Arjun Pandit and Sunny Khatri. House of Sunny Khatri was found locked. On seeking the Police party Arjun Pandit tried to slip away and thus he was over-powered and interrogated. He made the disclosure statement Ex.PW-12/H and led the Police party towards the back side of the railway station wherefrom he got recovered the dagger. He exhibited the memo Ex.PW-12/J in this regard. Arjun Pandit also disclosed that along with Sunny Khatri he had pledged the gold chain to Ram Narain PW-14 for ₹7000/-.

10. Ram Narain deposed that around one and half year ago Arjun Pandit came with a Police officer to his shop and Police asked him whether Arjun Pandit was known to him or Sunny Khatri was known to him, on which he informed that Sunny Khatri was known to him. He was taken to the Police Station but Sunny Khatri was not there. He was asked whether he was having the chain which was mortgaged to him by Sunny Khatri on the pretext that his mother was not well. The chain was having tanka, which was mortgaged with him for a sum of ₹7000/- about 2 ½ months before the day, when Arjun Pandit was brought to his shop. He produced the chain and

exhibited the same as Ex.P-3. This chain was duly identified by Preeti Arora in a TIP conducted vide Ex.PW-3/A by Shri Deepak Vasan, learned Metropolitan Magistrate PW-23. There is no challenge to the TIP proceedings. Nothing has been elicited from this witness in cross-examination to dent the recovery of chain of the deceased at the instance of Arjun Pandit.

11. Undoubtedly, there is no last seen evidence. As per the post-mortem report Ex.PW-9/A time since death was around 48 hours and thus the death took place sometime around 12.00 Noon on July 16, 2010. This is further corroborated by the call details of the mobile phone, as the last call received on Tata mobile No. 9266365261 was at about 10.46 AM on July 16, 2010. There is no evidence that Arjun Pandit was in the area where the murder took place around 12 noon on July 16, 2010.

12. As per the FSL report Ex.PW-25/A the dagger recovered at the pointing out of Arjun Pandit was found to contain human blood. Learned counsel for the appellant has assailed the recovery of the dagger on the ground that the place from where it has been recovered is accessible to all. There are contradictions in the place of recovery. However we need not go into this aspect as there is no opinion of the post-mortem doctor that the injuries to the deceased were possible by the dagger recovered at the instance of the appellant. In the absence thereof and as per FSL report only human blood being found on dagger without even the blood group of the deceased being specified, we are of the considered opinion that the recovery of the knife from the appellant is not connected with the offence committed.

13. The finding of the learned Trial Court that the shirt of the appellant was found from the spot is without any evidence on record as nobody has

identified that the shirt recovered from the spot was that of appellant. The entry in the house was friendly. Presence of used condoms and semen in the vaginal smear of the prosecutrix showed that she had sexual intercourse willingly. Jewellery items i.e. two bangles, two finger rings and wrist watch were found on the body of the deceased. Only chain, pair of tops and nose ring were found missing. Pair of tops and nose ring have not been recovered. The learned Trial Court has already held that the chain was not recovered at the instance of Arjun Pandit. He has already been acquitted for offences under Sections 120B, 392 and 397 IPC. Thus, there being no incriminating evidence against the appellant, he is acquitted of the charge of murder. Appeal is allowed. The appellant be released forthwith, if he is not required in any other case.

14. T.C.R. be returned.

15. 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**

**AUGUST 26, 2014**  
**‘ga’**