

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

% *Date of decision: August 28, 2014*

+ **CRL.A. 401/2012**

DHANPAL Appellant

Represented by: Mr.Bhupesh Narula, Adv.

versus

STATE (NCT OF DELHI) Respondent

Represented by: Ms.Aashaa Tiwari, APP with Insp.
Vijap Pal PS Dabri.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Dhanpal is aggrieved by the judgment dated July 08, 2010 convicting him for offences punishable under Section 302 and 452 IPC for the murder of Smt. Shashi Kala by repeatedly stabbing her and illegal trespass. He is also aggrieved by the order on sentence dated July 24, 2010 directing him to undergo imprisonment for life and to pay a fine of ₹ 30,000/- and in default to undergo 6 months simple imprisonment for offence punishable under Section 302 IPC, and the fine if realized to be given to the son and husband of the deceased in equal proportion and rigorous imprisonment for a period of 7 years and a fine of ₹ 7000/- and in default of payment of fine 1 month simple imprisonment for offence punishable under Section 452 IPC.

2. Dhanpal assails the judgment on the ground that there are material discrepancies in the testimony of the prosecution witnesses. No motive has

been imputed to Dhanpal for committing the murder of his own sister-in-law. Despite the case of the prosecution being that number of persons had gathered from the locality at the house of the deceased, however none of them was examined.

3. Though no defence evidence has been led, the explanation of Dhanpal in his statement under Section 313 Cr.P.C. is of false implication by the husband of the deceased as he wanted to get all the ancestral properties and that he earlier also implicated Dhanpal in a false case in which he had been acquitted.

4. The investigation was set into motion on December 11, 2008 on receipt of DD No. 17A at 12.40 noon at PS Dabri informing that at 5/3, Gali No.5, Main Sagarpur one lady has been assaulted by a chaaku. ASI Rajender Singh and Constable Suresh reached the spot where they found lot of blood in the staircase, chilli powder and a shawl lying soaked with blood. A knife looking like “Kirpan” along with its cover and some pieces of bangle were also lying there. Shashi Kala, the injured had already been shifted to the hospital by her husband Dev Raj. Shashi Kala was declared brought dead at the hospital and the nature of injuries were sharp and stab injuries. Crime team was called. Mrs. Anju, wife of Naresh was present at the spot who got recorded her statement on the basis of which rukka was sent for registration of the FIR.

5. Anju PW-1 stated that she was a housewife and residing at house No.1225, Gali No.5, main Sagarpur. Her husband was running a shop of wooden planks ‘Balli-fatta’. The neighbouring house was of her father-in-law’s brother wherein Shri Dev Raj along with his children was staying for the last 3 years and was running a shop of clothes. The stairs of her house

and the house of her father-in-law's brother were common. At around 12.15 noon when she was present at her house, in the house of her father-in-law's brother the tenant, Smt. Parvesh wife of Mukesh, Smt. Shashi Kala wife of Dev Raj and her son Avinash @ Chunnu aged 8 years were present. She was removing dried clothes on the roof of her house and suddenly she heard abuses from downstairs. She looked down and found one person who had caught hold of Shashi Kala and was inflicting stab wounds on her stomach and other parts of the body. He also stated that he would finish her life. Thereafter he ran away. That child Avinash @ Chunnu was calling that person Chacha. In the meantime his name was revealed as Dhanpal. Mrs. Parvesh and Avinash @ Chunnu had seen that person inflicting stab wounds to Smt. Shashi Kala. In her deposition in the Court Anju PW-1 deposed in sync with her statement on the basis of which FIR was recorded. However she also stated that she raised an alarm when the accused tried to run away but he was overpowered by the public persons in the Gali. She however stated that she did not know and with what weapon he had beaten Shashi Kala. In the cross-examination by the learned APP she stated that the accused was having a knife in his hand.

6. Smt. Parvesh PW-2 deposed that on December 11, 2008 at 12/12.30 noon she was present at her house. In the same premises Shashi Kala was residing with her children at the ground floor. When she was at the room for the purpose of drying her clothes she saw the accused present in Court enter the premises along with his reheri. After some time she heard the noise of scream. She came down and noticed that Dhanpal was giving stab wounds with a knife to the deceased Shashi Kala. She panicked and went upstairs and made noise. The son of the deceased called his father and neighbourer

who apprehended the accused with a knife/ kirpan. Within 20-30 minutes the Police also reached and took the knife/kirpan in possession vide memo Ex.PW-1/B6. She identified the blood stained cotton, chilli powder, earth control i.e. pieces of floor, specimen earth control and broken pieces of bangles.

7. Master Avinash PW-3 the son of the deceased also deposed on the same lines and stated that on December 11, 2008 at 12.00 noon when his mother had just come out of the bathroom his uncle Dhanpal who was already present there threw chilli powder in the eyes of his mother and thereafter assaulted her with a knife. When his mother tried to run away towards the staircase, the accused chased her and pulled her legs and then assaulted her repeatedly with a knife. Thereafter he ran away from the spot but was overpowered by the people. At the time of incident aunty Anju and Parvesh were also present who were living in the neighbourhood. His father took his mother to the hospital. Nothing material has been elicited in his cross-examination.

8. The version of these witnesses is further corroborated by the evidence of Dr. Komal Singh who conducted the post-mortem on the body of the deceased on December 13, 2008. He exhibited his post-mortem report Ex.PW-11/A. According to his opinion the cause of death was hemorrhagic shock subsequent to stab injuries to the vital organs of the body. Injuries were sufficient to cause death in the ordinary course of nature in combination. All injuries were ante-mortem and were same in duration. He also exhibited his subsequent opinion vide Ex.PW-11/B which he gave on examining the weapon of offence and opined that injuries No.2,3, 4-7, 9, 11-14 could be possible by the weapon of offence recovered. PW-11 noticed

the following injuries on the body of the deceased:

- “1. Contusion over forehead left side 5 mm x 5 mm, clotted blood.
2. CIW (clear incised wound) supt. over left forehead 1.5 cm x 0.6 cm, clotted blood present.
3. CIW on right hand over palmar surface, placed above right thumb 5.5 cm x 1 cm & 4 x 1.1 cm respectively, both angle acute. Clotted blood present around.
4. CIW on palmar surface of right index finger 1 cm x 0.5 cm, clot present
5. CIW palmar aspect of right middle finger at its distal phalanx 1 cm x 5 mm, clot present
6. CIW over the dorsal surface of left hand 4.1 cm x 1 cm.
7. CIW over outer surface of left thumb 3 cm x 0.5 cm
8. Abrasion over left breast 5 cm x 0.5 cm
9. Clear incised wound below the right breast 11 cm x 0.5 cm, both angles acute supt. cut
10. Abrasion over the sternum 2 cm x 1 cm
11. CIW over right hypochondria 4.5 x 2 cm on one angle acute other obtuse.
12. 5 cm below the above injury, another CIW 10.5 cm x 4 cm wound
13. 10 cm below it (No.) as a CIW 10.5 cm x 4 cm x 22 cm away from umbilicus
14. CIW on right knee joint 1.6 cm x 1 cm, 5 cm deep.”

9. From the overwhelming evidence led by the prosecution which is duly corroborated on all material particulars by the recovery of chilli powder, knife/kirpan, blood from the spot, we are of the considered view that the prosecution has proved its case beyond reasonable doubt against the appellant. Consequently, the appeal is dismissed. The appellant who is in

custody would suffer the remaining sentence.

10. T.C.R. be returned.

11. 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 28, 2014
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