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

% *Date of Decision : December 18, 2014*

+ **CRL.A.691/2011**

JARAFAT AHMAD @ SHAKIL AHMAD Appellant
Represented by: Ms.Rakhi Dubey, Advocate

versus

STATE Respondent
Represented by: Ms.Aashaa Tiwari, APP

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE R.K.GAUBA

PRADEEP NANDRAJOG, J. (Oral)

1. The officer on duty at the police control room recorded information in the PCR record at 15:33:18 hours on April 15, 2010, that through mobile phone number 9250661120 an informant (whose name is not legible) informed that at premises RZ-25A, Indira Park, Palam a man had been stabbed : '*EK ADMI KO CHAKU MAAR DIYA HAI*'. It also records that after the said information was flashed over the wireless, the police patrol van '*2BR-20*' relayed the information at 16:53:08 hours that a husband had stabbed his wife. The lady was Rehmat Jahan wife of Sakeel. Said information recorded in the PCR form has been proved at the trial as Ex.PW-2/A. One Heera Khan also rang up the police control room through his mobile number 9899435393 at 15:33:50 hours informing that at WZ-29A, Dabri during a quarrel a husband had stabbed his wife. Further

information is recorded in the said PCR form that the police patrol van '2BR-20' relayed the information at 16:53:08 hours that a husband had stabbed his wife. The lady was Rehmat Jahan wife of Sakeel. At the trial the second PCR form has been proved as Ex.PW-2/B.

2. The information was conveyed by the police control room to PS Dabri and entered by the duty officer vide DD No.31A and passed on to Insp.Ram Kishan PW-13 who reached House No.RZ-88/225, P Block, Dayal Park, Dabri and learnt that a police patrol van had shifted the injured to Deen Dayal Upadhyay Hospital. Sub-Inspector Suresh Chand PW-5 was informed by one Ct.Narain of a stabbing at House No.88/225, P Block, West Sagar Pur New Delhi. He reached the house before Insp.Ram Kishan could reach the house and found a lady stabbed in the house. A police patrol van reached and removed the lady to Deen Dayal Upadhyay Hospital. SI Suresh Chand accompanied the lady. She was declared brought dead by the doctor at DDU Hospital and thus the ornaments worn by the lady were removed from the body by the doctor and handed over to SI Suresh Chand who seized the same vide Ex.PW-5/A. He returned to the spot. Insp.Ram Kishan remained at the spot and summoned the crime team. Hina the daughter of the appellant and the deceased disclosed that her father had brutally assaulted her mother and thus Insp.Ram Kishore recorded Hina's statement Ex.PW-1/A and made an endorsement Ex.PW-13/A beneath the same and got the FIR Ex.PW-8/A registered.

3. Unfortunately at the trial report of the crime team and regretfully even the photographs taken of the scene of the crime have not been proved. Thus, this Court is denied the benefit of a pictorial representation of what was the scene of the crime after the incident took place.

4. Be that as it may, Insp.Ram Kishan seized from the scene of the crime a light brown coloured pillow and a red and green striped mattress, Ex.P-1 collectively, a sky blue coloured pillow and bed sheet of green creamish colour Ex.P-2 collectively, two broken pieces of wood akin to planks Ex.P-3 and Ex.P-4 and a scissor with handle broken as also the broken handle Ex.P-5 collectively and recorded the same in the seizure memo Ex.PW-1/B. He also lifted control concrete and blood stained concrete from the spot, which he recorded in the same seizure memo Ex.PW-1/B.

5. The MLC Ex.PW-11/B of Rehmat Jahan : the deceased was obtained from DDU Hospital which records that SI Suresh Chand got her admitted in the casualty at 4:35 PM on April 15, 2010.

6. The appellant was apprehended and made a disclosure statement, and since nothing was recovered pursuant to the disclosure statement we need not note its contents. But relevant would it be to note that when the appellant was apprehended, which was on the day of the incident itself, his shirt and pant which were stained with blood were seized. It was noted that the appellant had an injury on his right palm. He was taken to DDU Hospital where he was examined at 7:40 PM by Dr.Yogendra Nath Maurya PW-11 who recorded on the MLC Ex.PW-11/A that the appellant had a clean incised wound of approximate length 7 cm on the right palm and an abrasion at the tip of the middle finger of the right hand. During cross examination Dr.Yogendra Nath Maurya said that it was possible for the two injuries to have been caused if a person tried to prevent blow by a sharp weapon using the hand.

7. Rehmat Jahan's dead body was sent to the mortuary of DDU Hospital where Dr.B.N.Mishra PW-14 conducted the post-mortem and prepared the

report Ex.PW-14/A. The following injuries are recorded in the post-mortem report:-

“Sub scalp haematoma present over left tempo parietal region and occipital region with collection of dark red clotted blood with massive subdural haemorrhage present on left tempo parietal and occipital region of brain with generalized of size 5 x 4 cm present on left parietal lobe fractured left temporal bone with relatively depressed in nature.

- 1. Lacerated wound of size 8 cm x 2.5 cm x bone deep. Weadge shape with irregular margins with reddish surface present on the left tempo parietal region of scalp, clotted blood present around (caused by blunt impact with hard object).*
- 2. Clean incised wound of size 10 x 1.5 cm x bone deep present on the left tempo parietal region, obliquely placed with clean cut margins with clotted blood present on margins. (caused by sharp pointed weapon).*
- 3. Multiple stab-incised wounds of varing shape size from 1 x 0.5 cm x muscle deep to 2 x 1 cm muscle deep present on the left submandibular region of neck with sharp margins with dark reddish clotted blood. Along other scattered bruise of size 1 x 0.7 cm to 1.5 x 1 cm with reddish brown in colour present on the face, eyebrows and forehead.*
- 4. One incised stab wound of size 2 x 0.5 cm muscle deep present on the left supraclavicular region of chest with sharp margins and reddish edges.*
- 5. Incised stab wound of size 7 x 3 x bone deep present on the anterolateral aspect of right forearm with exposing muscles adjacent.*
- 6. One incised stab wound of size 4 x 1 x muscle deep present on the lateral aspect of right upper forearm.*

7. *Incised stab wound of size 3 x 2 x bone deep present over the medial border of left scapula.*

8. *Incised stab wound of size 2 x 1 cm x deep to thoracic cavity present on the right mid part of the back chest with tearing of lower lobe of right lung and collection of blood about 600-700 ml in thoracic cavity.*

9. *Incised stab wound of size 1.5 x 1 cm x muscle deep present at the epigastric region of abdomen with clean cut margins.*

10. *3-4 another incised stab wound present on the left side of back of chest with dimension 2 cm x 1 x muscle deep to 2.5 x 1 x deep to thoracic cavity with tearing lower lobe of left lung with collection of blood clots and liquid blood in thoracic cavity of amount – about 600-700 ml with dark reddish in colour.*

11. *Elongated (patterned) bruise of size 4 x 3 cm present on the upper part of left shoulder another elongated bruise of size 7 x 3 cm with reddish brown in colour present on the left loin region of abdomen which is inflicted by using weapon like danda/lathi.*

12. *One incised stab wound of size 3 x 2 x muscle deep present on the lateral aspect of right leg with regular and sharp margins.”*

8. The cause of death opined was cranio cerebral injuries as also the multiple incised stab wound injuries. He opined that the blunt injuries were caused by a blunt object and the incised stab wounds were caused by an object which had to be a knife or scissors.

9. The shirt, salwar, brassier and underwear of the deceased were handed over by him to the Investigating Officer along with a blood sample of the deceased taken on a piece of gauze.

10. Sent for forensic examination, the FSL Report Ex.PW-12/A opines that the blood group of the deceased was 'B' which was detected on the pillow covers, the bed sheet and the mattress lifted from the scene of the crime as also on the clothes of the deceased. Whereas human blood of group 'B' was detected on the shirt of the appellant, human blood, group whereof could not be ascertained was detected on the pant.

11. The scissor Ex.P-5 with the broken handle was sent to Dr.B.N.Mishra who had conducted the post-mortem of Rehmat Jahan for his opinion regarding the injuries recorded on the MLC Ex.PW-11/A of the appellant and vide his opinion Ex.PW-14/B he opined that the injury on the hand of the appellant was possible during the act of stabbing of the victim.

12. At the trial Baby Hina PW-1, aged 12 years stood by what she had told Insp.Ram Kishan in her statement Ex.PW-1/A that on the day of the incident she was present in the house with her mother when her father came to take grain to feed the hens and as he returned he threw chilly on the face of her mother. As her mother pushed her father he picked up a scissor lying nearby and stabbed her mother repeatedly. She ran out to call her maternal uncle Heera who lived nearby. She told him what had happened. Her maternal uncle informed the police and came back with her along with her sister Muskan who had gone to the beauty parlour. When she came back she saw her mother lying in a pool of blood. The police came and recorded her statement Ex.PW-1/A. She deposed to the various exhibits being lifted from the house in her presence.

13. Relevant would it be to note that during cross examination she denied that her maternal uncle (mama) Heera used to frequently visit their house and was present in their house when the incident took place. She denied the

suggestion that an altercation took place between her father and her mother when her father enquired as to what was Heera doing in the house. She denied the suggestion that her mother attacked her father with a scissor when he asked for lunch.

14. Muskan aged 21 years appearing as PW-4 corroborated Hina that she was at the beauty parlour where she used to work on April 15, 2010 when her sister Hina came to her and told her that her father had stabbed their mother. She reached back home to see her mother lying in a pool of blood. A neighbour had informed the police of the incident. The police came and lifted the various exhibits entered in the seizure memo Ex.PW-1/B, which exhibits she correctly identified in the Court.

15. The line of cross examination adopted to test the credibility of Muskan is the same as that what was for Hina i.e. that the appellant had an issue of their mama Heera visiting their mother.

16. SI Suresh Chand PW-5 and Insp.Ram Kishan PW-13 have deposed facts at the trial which we have noted hereinabove concerning the steps taken by him when they were informed of the stabbing incident in question and nothing has been shown to us which discredits the testimony of the two police officers.

17. The learned Trial Judge has found it to be an open and a shut case. The explanation by the appellant has been rejected. The appellant's version is to be found in the answer to the last question put to him when he was examined under Section 313 Cr.P.C. i.e. what did he have to say. The appellant said :-

“Ans. I was falsely implicated in this case. My wife Rehmat Jahan was having illicit relation with Heera who was my

neighbour. On the day of the incident my daughters namely Muskan and Hina were not present at the house and when I reached at my house at about 11:00 am and found my wife Rehmat Jahan and Heera in a compromising condition. When I objected to it my wife assaulted me with a scissor but I succeed to save myself. My wife Rehmat Jahan stabbed the same scissor on her stomach. On seeing this immediately I left the house and proceeded to police station. My wife Rehmat Jahan used to quarrel with me and she used to gave beatings to my daughter namely Hina.”

18. Having perused the evidence led at the trial, critical parts whereof have been noted by us hereinabove, we agree with the view taken by the learned Trial Judge that the prosecution has successfully established its case against the appellant. The explanation by the appellant that when he saw his wife in a compromising position with Heera, he objected, his wife assaulted him with a scissor, and as he managed to save himself, his wife stabbed herself on the stomach with the scissors, to say the least is a fantastic story having no legs to stand on.

19. Baby Hina had no motive to falsely implicate her father. The appellant has not explained how his clothes got stained with blood. He has admitted that his blood stained clothes were seized by SI Suresh Chand as recorded in the memo Ex.PW-5/B. The injury on the palm of the appellant could not be the result of a defence action if appellant's wife had attacked him with the knife and we would only record that Dr.Yogender Nath Maurya has shown his innocence and lack of knowledge when he said that the injury was possible if a person tried to prevent a blow directed towards him by a sharp weapon. The reason is that the injury is a clean incised wound of approximate length 7 cm. If appellant's wife, with the scissor

Ex.P-5, struck a blow towards the appellant and he used the palm of his hand as a shield, the seven centimetre cut was not possible. Besides, it is impossible for a person to stab oneself 16 times in the abdomen, forearm, chest etc. We have said that it is impossible for a person to stab oneself 16 times in the abdomen, forearm and chest notwithstanding the post-mortem report recording 12 injuries for the reason injury at serial No.10 is in fact three or four incised stab wounds on the left side of back of chest. Injuries at Serial No.10 and 11 could not be self inflicted for the reason the 3-4 incised stab wounds at serial No.10 are on the left side of back of chest. Injury No.11 is on the upper part of the left shoulder. Besides, what about injuries No.1 and 2. The two are the result of being hit forcefully with a wooden plank, and we highlight that from the scene of the crime two broken pieces of wood akin to planks, Ex.P-3 and Ex.P-4 were seized. The injuries on the skull show that the left temporal bone was fractured and depressed. This could not be the result of Rehmat Jahan hitting herself on the head.

20. Learned counsel for the appellant urges that the informant Heera Khan on whose information PCR form Ex.PW-2/B was filled up has not been examined and hence the prosecution has held back a material witness.

21. The argument ignores the fact that Heera Khan was not an eye witness. Baby Hina has deposed that when her father started hitting her mother she ran out to call her maternal uncle Heera who lived nearby and when she told him what had happened, he informed the police.

22. That apart, where a material witness is not examined, Courts have drawn an adverse inference against the prosecution only when a doubt is cast on the testimony of the eye witnesses and the rule of caution i.e. of the possibility of a person whose presence was otherwise established at the time

of the crime not supporting the case of the prosecution would loom large in the realm of the real. In the instant case appellant's wife has been brutally stabbed with a scissor in her matrimonial house and has been brutally hit on the head with a wooden plank. Appellant's presence in the house has been established by the testimony of his daughter Baby Hina and presence of his wife's blood on his clothes. His act of absconsion is another piece of incriminating evidence. Appellant's version of how his wife was injured has been rejected by us and the false explanation given by the appellant as to the cause of the injuries of his wife is another piece of incriminating evidence.

23. The argument that Baby Hina has not said that she saw the appellant hit her mother with a wooden plank ignores that as per Baby Hina, when she saw the appellant stabbed her mother with the scissor she ran out to call her maternal uncle Heera. It is apparent that when the scissor broke, the brute in the appellant was not satisfied. It wanted more blood. The appellant picked up a wooden plank and hit his wife on the head. The plank broke into two because it was struck with force on the head of appellant's wife. Left temporal bone was fractured and depressed. It shows the force with which the plank was hit on the head.

24. From the line of cross examination adopted to test the veracity of Baby Hina and her sister Muskan, it is apparent that the appellant was a short tempered man of suspicion. Heera who was the brother of his wife used to meet his sister. The appellant, a suspicious man, without any reason and without understanding the bond between a brother and a sister suspected his wife of having illicit relationship with her brother. In her examination in chief, Hina had said that without any reason appellant threw chilly powder in the eyes of her mother. Suggestion given to her during cross examination

that her mother attacked the appellant when he asked for lunch, when read in light of Hina's statement in the examination in chief regarding appellant throwing chilly powder on her mother strongly probablizes that the appellant had some issue with his wife concerning the food which she had cooked and being an intemperate man, the appellant launched a brutal assault on his wife. The suggestion admits that Hina was present in the house and saw a part of the assault. The argument that the appellant acted upon a sudden quarrel is rejected, and assuming that the appellant acted upon a sudden quarrel, since there is brutality in the assault, it has to be held that the appellant acted in a cruel and an unusual manner and hence would not be entitled to the benefit of the fourth exception to Section 300 of the Penal Code.

25. That Baby Hina was aged 12 years when she deposed in Court on January 07, 2011 and was aged 11 years when the incident took place, but the learned Trial Judge has not put questions to her to ascertain whether she understood the questions and additionally the learned Trial Judge examined her under oath is, with regret, an omission by the learned Trial Judge, who ought not to have put a child witness on oath and should have generally questioned Baby Hina to ascertain whether she understood the questions put to her. But, from Hina's deposition and answers given by her in cross-examination it is apparent that Hina, notwithstanding that she just entered the teens, is a very mature girl. She has answered the questions with precision which in turn proves her intelligence and understanding.

26. There is no merit in the appeal which is dismissed.

27. Impugned order dated March 28, 2011 convicting the appellant and the order on sentence dated March 30, 2011 are affirmed.

28. TCR be returned.

29. Two copies of the present decision be sent to the Superintendent Central Jail Tihar. One for his record and the other to be supplied to the appellant.

CrI.M.B.No.957/2011

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(R.K.GAUBA)
JUDGE

DECEMBER 18, 2014

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