

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

% *Judgment Reserved on: September 01, 2014*
Judgment Delivered on: September 04, 2014

+ **CRL.A. 912/2013**

DHANANAJAY KUMAR @ PYARE LAL Appellant
Represented by: Mr.Chetan Anand, Advocate

versus

STATE (GOVT. OF NCT) OF DELHI Respondent
Represented by: Ms.Aashaa Tiwari, APP.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Dhananjay Kumar is convicted of the offence of murder of his wife Chanchal whom he married 7-8 months prior to the incident by the impugned judgment dated March 19, 2013 and by the order on sentence dated March 23, 2013 he has been directed to undergo imprisonment for life and a fine of ₹ 10,000/- and in default of payment of fine to undergo further simple imprisonment for two years.

2. Dhananjay Kumar assails the judgment on the ground that there is no eye-witness to the incident. All the witnesses are interested witnesses and relations of the deceased. There are material contradictions in the testimony of the witnesses. The FSL report does not implicate Dhananjay Kumar. The defence of the appellant that he was sleeping at his place and was informed by Munna that his wife has been murdered has not been considered.

Dhananjay Kumar never doubted that his wife was having illicit relations with Munna. Dharmender PW6 on whose statement FIR has been registered was not present at home when the factum of death of Chanchal was revealed. In view of the material contradictions in the testimony of the witnesses the prosecution has not been able to prove its case beyond reasonable doubt and thus the appellant is entitled to be acquitted.

3. Investigation was set into motion on receipt of DD No.7A vide Ex.PW-16/A at about 6.30 AM on May 28, 2010 at Police Station Bawana informing that at H-8, Bawana husband and wife were sleeping on the roof and somebody had killed the wife. On reaching the spot, statement of Dharmender brother of the deceased was recorded vide Ex.PW-6/A who stated that he was working as beldar on daily basis at DSIDC Bawana. Around 11 months ago his sister Chanchal Devi had married Dhananjay. Around one month ago Dhananjay along with his sister Chanchal came to DSIDC Bawana for work and started living with his elder brother-in-law Munna, his sister Rani and their children at H-8, Sector-1, DSIDC Bawana and was doing the work as beldar. After a few days Dhananjay started doubting his sister's character and suspected that Chanchal had illicit relations with Munna. He used to often abuse and beat his sister. He and his sister Rani made him understand number of times. On May 27, 2010 he had gone to his sister at H-8, Sector-1, DSIDC Bawana where again Dhananjay started abusing Chanchal suspecting her fidelity. He, his sister Rani and brother-in-law Munna tried to make him understand when they were all sitting on the roof of the factory. After making him understand, he, his sister Rani and brother-in-law Munna came down at 9 O'clock and Chanchal and Dhananjay were left on the roof. Leaving his sister Rani and

brother-in-law Munna downstairs he went to his residence around. In the next morning at around 5.30/6.00 AM his brother-in-law Footo who was living with his children at J-131, Sector-1, DSIDC Bawana with his children doing the work of beldar came to him and informed that his sister Chanchal had been murdered. He reached the spot where he found the dead body of his sister lying on the roof of factory. There was a big iron rod inserted in the stomach of his sister and her face was covered with bricks. He suspected Dhananjay to have murdered Chanchal as he doubted her fidelity.

4. The prosecution case is based on circumstantial evidence mainly on the fact that at night deceased and appellant who was her husband were sleeping on the roof and there was no third person coupled with the motive and recovery of blood stained clothes of the deceased. As regards the last seen evidence undoubtedly all the witnesses are relation witnesses being Dharmender, Rani and Munna and have stated that at night the deceased and Dhananjay were sleeping on the roof and there was no other person. Since they are related witnesses their testimony is required to be scrutinised with care and caution.

5. Dharmender PW-6 has deposed in sync with his statement on the basis of which FIR was registered except that though he stated about frequent quarrels between Chanchal and Dhananjay, however he could not tell the reasons behind the quarrels. Though in his chief he stated that Dhananjay wanted to go to his native place and his sister was insisting to accompany him as she suspected that her husband was having illicit relations with his sister-in-law, however on cross-examination by learned APP Dharmender stated that Dhananjay suspected Chanchal having relations with her brother-in-law i.e. Munna. The most material fact that on

the previous night at 9.00 PM after talks of settlement he, his sister Rani and brother-in-law Munna came down from the roof and his sister Chanchal and Dhananjay remained on the roof of factory was stated in cross-examination by the learned APP. This leaves us with the testimony of Munna PW-4 and Rani PW-18 the other two witnesses who were present at the place of incident.

6. Munna PW-4 stated that in the year 2010 he was residing at H Block, Sector-1, Bawana and working as watchman in a factory under construction. Dhananjay his co-brother (Sadoo) i.e. husband of his sister-in-law Chanchal was working as beldar in the same factory. On the day of incident Dhananjay came and told that his wife was not in his house. He requested him to search his wife and when they were searching here and there they could not find her. Then he along with his wife Rani and Dhananjay went to the roof where they saw the dead body of Chanchal. He saw a sariya inside the abdominal region of Chanchal. Though this witness has stated that he confessed before the Police, however the said part of the statement is not admissible in evidence.

7. Rani PW-18 the sister of the deceased deposed that in the year 2010 it was mild winter and her husband was working in the factory under construction at H-8, Sector-1 Bawana. They used to reside in that building only. Deceased Chanchal was her real younger sister and Dhananjay her husband. Dhananjay used to reside in another factory building which was at a distance of 6-7 factories away from their building in the same vicinity. Their other sister Shobha and her husband Footo used to reside in the same building in which Dhananjay and her sister Chanchal used to reside. She further stated that 10 days prior to the incident Dhananjay and his sister

started residing in the same building where they were residing. One day prior to the incident Dhananjay had given beatings to his sister Chanchal as she had suspected that her husband Munna and Chanchal were having illicit relations. Dhananjay threatened to kill her sister a number of times in front of her due to the aforesaid reasons. Dhananjay came to our house and called her husband on the roof of the building and told that Chanchal was not there in the house. After that Dhananjay told that dead body of Chanchal was lying on the roof of the building. She also stated that on the night of incident Dhananjay and his wife, she and her husband and her children were present in the building. In the night Dhananjay was quarrelling with Chanchal as he suspected illicit relations with her husband. They came downstairs and slept in their room. Her sister and Dhananjay remained on the roof and slept

8. From the testimony of these witnesses two material points emerged one is that Dhananjay, Chanchal, Munna, Rani and the children of Munna and Rani were staying in the said house. Munna, Rani and their children were sleeping on the fateful night on the ground floor store room, whereas Dhananjay and his wife were sleeping on the roof.

9. In his statement under Section 313 Cr.P.C. Dhananjay has admitted that he was residing at H-8, Sector-1, DSIDC Bawana where Rani with her husband was residing in the storeroom of the factory side and he was residing with Chanchal in the adjoining room. The explanation of Dhananjay is that he was sleeping at his place and Munna woke him up and told him that his wife has been murdered and he was sleeping there. Thereafter Police was informed and he did not confess the guilt. Thus, Dhananjay admits sleeping near his wife where her murder took place.

10. When an incident takes place in the night with the husband sleeping by the side of the wife, the onus shifts to the husband under Section 106 Indian Evidence Act as to how the death of wife took place. In the decision reported as (1993) 3 SCC 573 Prabhudayal & Ors Vs. State of Maharashtra the Supreme Court held that the homicidal death of the deceased occurred while she was in their custody. The incident with its gravity and extent cannot in any manner go unnoticed. As such, the accused persons were duty bound to offer plausible explanation.

11. In the decision reported as (2006) 10 SCC 681 Trimukh Maroti Kirkan Vs. State of Maharashtra it was observed that where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime.

12. This brings us to the aspect as to how and when the death of Chanchal took place. Dr. Kulbhushan Goel PW-7 conducted the post-mortem of deceased Chanchal. He noticed one iron rod (sariya) of length around 94.5 inches and about 7 cms circumference embedded in the abdomen at one end. Both the ends of the rod were blunt and the end inside the abdomen was irregular. The rod was rusted with oblique spiral ridges in whole length. The end of the rod which was inside the body was blood stained. On examination he also found one blue Saree tied around the neck with double

knot on the left side and one corner of the Saree inside the mouth. He noticed the following injuries:

1. *Multiple abrasions with contusions scattered all over left molar region (4x3 cm,) at places over nose, right molar region, chin, lower lip & below the lip, upper lip, left side of forehead 3 x 2 cm, at midline epigastrium 5 x 3 cm, few over both elbows, knees & multiple over right scapular region.*
2. *Lacerated punctured wound 2.5 cm x 2 cm near midline front of neck near apple of adam with around 5 x 3 cm. Wound is slightly right to midline.*
3. *Lacerated perforated wound 2 x 1.5 cm with contusion abrasion around in area 2.5 x 1.5 cm with everted margins over upper most part of left scapular region. On exploration, injury No.2 penetrates the neck joint at right side neck joint adjacent to midline crushed the underlying neck muscles & blood vessels, running obliquely downwards & to the left side & exits through injury No.3. Bruising & clots +.*
4. *There is 2.5 x 2 cm lacerated punctured wound (iron rod was removed from this wound) just below & adjacent to right lower costal margin about 1.5 cm right to midline with abrasion 5 x 4.5 cm area around the wound.*
5. *Lacerated perforated wound with more or less everted margins 1.5 x 1 cm with centred area around 2.5 x 1.5 cm over right back of chest lower side about 11 cm below inferior border of right scapula & 5 cm right to midline. On explanation, injury No.4 runs backwards almost at the same plain & exists through injury No.5 piercing through right XI ICS. Right lobe of liver is perforated through & through & lacerated.*
6. *Lacerated punctured wound 2 x 1.5 cm with abrasions around in area 5 x 4 cm over right side abdomen, 2.5 cm right to midline over junction of Epigestrium & umbilical quadrants. Omentum is prolapsing out.*
7. *Lacerated perforating wound with everted margins of size 1.75 x 1.25 cm with @ contused abrasions around 2 x 1.5*

cm area over right side of joint of back of chest & abdomen, about 6 cm right to midline. On exploration, injury No.6 enters the cavity perforates & crushed omentum & loops of intestine at places & exists through injury No.7 by fracturing XII rib.

Injury No.4 & 6 transfix the abdominal cavity. Large amount of blood & clots present in abdominal cavity. No ligature mark seen around the neck.”

13. Dr. Kulbhushan exhibited the post-mortem report as Ex.PW-7/A. He opined that all the injuries were ante-mortem in nature. Injuries No.2 to 7 were caused by blunt penetrating object and were consistent with iron rod found embedded in the abdomen at injury No.4. Injuries No.1 was caused by blunt force impact. Cause of death was shock and haemorrhage as a result of multiple injuries involving neck vessels, liver, and intestine. Neck and abdominal injuries were sufficient to cause death in the ordinary course of nature individually and collectively. Manner of death was homicidal and time since death was around 2 and a half days. Post mortem of the deceased was done on May 30, 2010 at 11.30 AM. Thus, the death took place somewhere around 11.30/12.00 in the midnight of May 27/28, 2010.

14. The accused was sleeping with his wife on the roof and the gruesome manner in which she received injuries it is not possible that if some other person would have murdered the deceased he would not have heard her cries and shrieks.

15. Moreover, at the instance of Dhananjay pursuant to his disclosure statement his clothes were recovered. His pant which was of pink colour was found to be blood stained and as per the FSL report Ex.PX human blood was detected on the pant though no grouping could be ascertained.

16. Learned counsel for Dhananjay has sought to highlight that

Dhananjay did not abscond from the place of occurrence as he had committed no offence and thus his conduct was incompatible to that of an offender. Dhananjay though did not flee from the place of incidence, however after the incident he went to Munna and stated that his wife be searched as she was not in the house. Thereafter search was made and dead body of Chanchal was found lying on the roof. So the conduct of Dhananjay was one of misleading the relatives of the deceased.

17. Considering the evidence on record we find no infirmity in the impugned judgment of conviction and order on sentence. Consequently, the appeal is dismissed. The appellant will suffer the remaining sentence.

18. T.C.R. be returned.

19. 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 04, 2014
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