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

Date of decision: August 14, 2014

+ **CRL.A. 816/2012**

NARENDER KUMAR @ PAPPU Appellant
Represented by: Mr.S.B.Dandapani, Advocate

versus

STATE Respondent
Represented by: Ms.Aashaa Tiwari, APP for
the State with Insp.Joginder
Singh P.S.Patel Nagar

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. Raghubir Singh PW-7 was residing at house No.D-222, Gali No.21, Sanjay Park, Baljeet Nagar, in the year 2008. Returning to his house at 8.00 P.M. on June 09, 2008 he saw a lady in a pool of blood lying in the gali with a crowd nearby. From his mobile phone having No.9811514730 he informed the police control room of said fact which in turn passed on the information to PS Patel Nagar where ASI Rishipal PW-10 on duty as the duty officer reduced the same into writing vide DD No.42-A, Ex.PW-10/A at 8.10 P.M. He handed over copy of DD No.42-A to SI Chander Prakash PW-18 who, accompanied by Ct.Vijay PW-22 and Ct.Sudesh (not examined) proceeded to gali No.21, Baljeet Nagar. Soon thereafter appellant Narender Kumar reached the police station at 8.30 P.M. with blood on his hands and on his clothes and told ASI Rishipal PW-10 that he had murdered his wife which was reduced into writing by ASI Rishipal

vide DD No.44-A Ex.PW-10/C.

2. At the spot SI Chander Prakash met Badri Prasad PW-17 who resides in house No.T-2880, Gali No.21-B, Baljeet Nagar. He informed him that he runs a grocery shop from his house and knew Narender and his wife Sheila Devi from the last 9 to 10 years. He saw Narender drag his wife out of the house, and throw her in the gali; and left for the police station saying that he had killed his wife and requested the neighbours to take care of the child.

3. Narender, the appellant was apprehended.

4. At the trial Mahesh PW-2 deposed that he saw Narender drag his bleeding wife on the street. Master Yatinder PW-3, the son of Narender Kumar and deceased Sheila deposed that his mother returned from work at 7.00 P.M. His father had quarrelled with his mother and smashed the telephone. He went out to call his grandmother and requested her to save his mother from his father and as he returned he saw his bleeding mother being dragged on the street by his father. Chalo PW-4, another neighbour deposed that at 8.00 P.M. he saw Narender drag his wife on the gali while she was bleeding. He left his wife in the gali and left. Krishan Lal PW-5 the brother of Narender deposed that he was residing on the first floor whereas Narender and his family were residing on the ground floor. Narender was a drunkard and unemployed. He used to suffer from fits. Sheila Devi was employed. At around 8.00 P.M he heard the cry of Sheila and rushed to the ground floor. He saw Narender drag his bleeding wife on to the street. Buland PW-6 the elder brother of Narender deposed that in the morning of June 09, 2008 while going to work he had borrowed ₹20/- from Sheila when Narender abused her saying that if she could give ₹20/- to him why not to Narender as well. When he returned from work at 8.30 P.M. he saw

Sheila lying dead on the street. Raghubir Singh PW-7 deposed that he made the telephone call to the police when while returning to his wife he saw a lady lying on the street in a pool of blood.

5. Ct.Rakesh PW-9 a member of the crime team who took photographs of the dead body and place of the occurrence proved 18 photographs Ex.PW-9/A-1 to A-18 and their negatives Ex.PW-9/B-1 to B-18. ASI Rishipal PW-10 deposed facts which we have noted hereinabove while narrating the facts.

6. Dr.Kamal Singh PW-19 prepared the post mortem report Ex.PW-19/A deposed that the deceased suffered the following injuries:-

EXTERNAL EXAMINATION

(1) *One clean incised wound (CIW) of size 1.8cm x .7 cm lying over right supraclavicular area, its one angle acute & the other obtuse. It was placed 7 cm above the manubrium streni and 3 cm lateral to midline. There was Clotted blood present over the wound.*

(2) *CIW at the left posterior auricular area 5 cm x 2 cm and there was clotted blood around.*

(3) *CIW at the base of right thumb 2.5 cm x 1 cm and it was bone deep.*

(4) *CIW over (R) 2nd ICS 1 cm x 1 cm at the parasternal area.*

INTERNAL EXAMINATION

Brain was pale. 15 ml of clotted and liquid blood was present over the connective and the muscular tissue on the anterior surface of the neck Trachea was congested. 1.5 lt clotted and liquid blood was present in the right thoracic cavity. Upper left lobe of the right lung had the penetrating injury of 1.3 cm x 1 cm x 2 cm. Stomach contained 20 ml of digested food. All other body organs were pale.

7. Examined under Section 313 Cr.P.C., to questions No.4, 7, 18, 19 and 20, Narender Kumar answered as under:-

“Q.4 It is in evidence against you that on 09.06.2008 at about 8.30 pm you went to the police station wearing blood stained clothes and told PW-10 ASI Rishipal, the duty officer, that you have murdered your wife Sheila. Your statement was reduced into writing by PW-10 ASI Rishipal vide DD No.44-A Ex.PW-10/C and you were kept in the police station in custody of PW-14 Ct.Devender. PW-10 ASI Rishipal Singh after recording DD No.44 conveyed the information to PW-23 Insp.M.S.Shekhawat. PW-23 Insp.M.S.Shekhawat received this information from duty officer when he was present at the spot and after receiving information he instructed PW-10 ASI Rishipal accordingly. What do you have to say about it.?”

Ans. It is correct that I went to the police station and my clothes were blood stained, but I had gone to make complaint that somebody had killed my wife.

Q.7 It is in evidence against you that PW-17 Badri Prasad has been residing in your neighbourhood since last 9 or 10 years. On 09.06.2008 PW-17 Badri Prasad was present at about 8.00 pm in his shop and he saw you dragging your wife Smt.Sheila out of your house by pulling her hairs. Thereafter you threw her in the gali. You stated that you have finished your wife and said that you are going to the police station. You asked the neighbours to take care of your child. At that time Sheila Devi was bleeding from her neck and her clothes were soaked with blood. Public gathered there and someone informed the police at No.100. PW-17 Badri Prasad observed that Smt.Sheila was dead by that time. PW-17 Badri Prasad also observed the blood stains on your cloths and at that time you are having the object like knife in your hand. Your son Tanu also informed that you had a quarrel with Smt.Sheila and you have beaten her. PW-17 Badri Prasad had also deposed that even prior to the date of incident you used to beat Smt.Sheila off and on. What do you have to say?

Ans. I was not pulling my wife and I was trying to take her to the hospital. But when she died I went to the police station to make complaint and told Badri, Nata and others to take care of my son.

Q.18 It is in evidence against you that PW-6 Buland Kumar, your younger brother, residing with you on the ground floor of the house, stated that on 09.06.2008, you abused your wife Smt.Sheila Devi for giving ₹20/- to PW-6 Buland while she refused to give you the money. You also threatened to kill her and were without job. He returned at about 8.30 pm and found Smt.Sheila Devi lying dead in pool of blood in the gali. Police was present there and informed him about the matter and then he conveyed the information to his relatives. What do you have to say?

Ans. It is correct I quarrelled with my wife on that day for giving money to my brother Buland, who was living with us. But I did not mean to kill her.

Q.19 It is in evidence against you that on 09.06.2008 at about 7.00 or 8.00 pm PW—5 Kishan Lal, your brother residing at first floor of the house, was present in his house and was taking food. He heard the noise of quarrel between you and your wife Smt.Sheila Devi, but did not give any attention saying it was a routine matter. After sometime he heard a loud cry of Smt.Sheila Devi and he rushed to the ground floor after leaving his food. He saw you dragging your wife Smt.Sheila Devi towards the gali by holding her from the hair. Smt.Sheila Devi was having blood on her body. You put your wife in the gali. You were in possession of a kataar type knife. Public persons informed PW-5 Kishan Lal that you claim to have finished your wife and were going to police station. PW-5 Kishan Lal has deposed that you used to threaten your wife to kill as you were suspicious about her character. What do you have to say?

Ans. I do not know what happened at that time. I had got a fit and became unconscious. Somebody came and killed

my wife. When I gained consciousness, I tried to take her to the hospital but she died.

Q.20 It is in evidence against you that on 09.06.2008 your son PW-3 Master Yatinder was present in the house when at about 7.00 pm your wife Smt.Sheila Devi returned from place of her employment and she started making a call on telephone to maternal uncle of PW-3 Master Yatinder namely Bharat. You were present in the house at that time. You suddenly flared up and smashed the phone. PW-3 Master Yatinder went to call his grandmother to save his mother as you were quarrelling with her. PW-3 Master Yatinder went to house of his grandmother who was residing on the ground floor of another house situated nearby and found that his grandmother has gone to fetch the vegetables. When he returned he found his mother to have been pulled outside by you and she fell down outside the house in the gali. He saw her bleeding from her neck and her stomach. PW-3 Master Yatinder while standing in the gali saw you pulling Smt.Sheila Devi outside the house. You left the place saying that you will go to jail. What do you have to say?

Ans. It is correct that my son Yatinder was at home that time. I did not quarrel with my wife when she returned from work. I do not know what happened. I had a fit."

8. Narender Kumar examined his brother Naveen as DW-1 who deposed that Narender Kumar used to suffer from fits and would remain violent for 15 to 20 minutes and during this period he was incapable to perform any act except for throwing things around. He would froth from his mouth during this period. He would then remain unconscious for 1 to 3 hours. Thereafter, he would become normal. To put it pithily, as per Naveen Kumar, Narender Kumar used to suffer from epilepsy.

9. As per the law declared by the Supreme Court in the decision reported as AIR 1966 SC 119 Aghnoo Nagesia vs.State of Bihar, Narender statement Ex.PW-10/C made to ASI Rishipal PW-10 is admissible limited to his

being present at the police station at 8.30 P.M. ASI Rishipal's testimony that Narender was present at the police station at 8.30 P.M. with blood stained clothes is also admissible in evidence. The twin would show that at 8.30 P.M. Narender was at the police station and was not under the after effects of epilepsy.

10. The time when Sheila was stabbed and dragged on the street which is consistently emerging from the testimony of all witnesses is 8.00 P.M. Ex.PW-10/A would evidence that at the police station the crime was reported at 8.10 P.M.

11. Narender's explanation when examined under Section 313 Cr.P.C. that he had a fit and therefore does not remember anything is false for the reason even his defence witness has deposed that the epilepsy fit whenever suffered by Narender would last for between 10 to 15 minutes and thereafter Narender would remain unconscious between 1 hour to 3 hours. If Narender was suffering from an epileptical fit when he stabbed his wife, he would not have been seen dragging his wife on the street. His brothers would have noted his body shivering violently. They would have noted froth oozing out from his mouth. Narender could not have walked to the police station which took him to 20 minutes time to do so and make the statement Ex.PW-10/C.

12. It is a water tight case against Narender. A man without a job, he was an alcoholic. He was short tempered as deposed to by his son. He was angry with his wife because in the morning she had lent ₹20/- to his younger brother but was not giving any money to him to purchase alcohol. It is apparent that in a fit of anger in the evening he stabbed his wife twice and so overcome was he by anger against the unfortunate lady that he dragged her out of the house and left her on the street. Realizing that what he did was

seen by his son, brothers and neighbours and knowing that there was no escape he went to the police station and surrendered.

13. It is the compulsion of law to not look into his confessional made before PW-10.

14. It would be useless for us to discuss any further except to note that as per FSL report Ex.PX-1 human blood of the same group as that of the deceased was detected on the clothes, a shirt and a pant worn by Narender when he surrendered at the police station.

15. The explanation given by the appellant when examined under Section 313 Cr.P.C. being false and he not having explained as to why did he stab his wife four times, inference has to be drawn that he stabbed the wife intending to cause the injuries which he inflicted. Two of which were sufficient in the ordinary course to cause death. Section 300 thirdly IPC is fully attracted.

16. The appeal is dismissed

17. Copy of this order be sent to the Superintendent Central Jail Tihar for his record and to be supplied to Narender Kumar.

18. TCR be returned.

CrI.M.(Bail) No.1173/2014

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

AUGUST 14, 2014

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