

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

% *Date of decision: October 10, 2014*

+ **CRL.A. 1092/2014**

SITA RAM

..... Appellant

Represented by: Ms.Shashi Jaiswal and
Mr.Rana Rajdeep Singh,
Advocates.

versus

THE STATE

..... Respondent

Represented by: Ms.Aashaa Tiwari, APP for the
State with Inspector Hans Raj.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.B.No.10269/2014 (suspension of sentence)

Since we are finally hearing the arguments in the appeal and deciding the same, the application seeking suspension of sentence pending hearing of the appeal, is dismissed as infructuous.

CRL.A. 1092/2014

1. Sita Ram is convicted for the murder of his son Naresh and awarded life imprisonment and a fine of ₹500/- and in default of payment of fine to undergo simple imprisonment for one year which judgement of conviction and order on sentence he challenges in the present appeal.

2. Learned counsel for the appellant assails the judgment on the ground that this is a case of no evidence. The witnesses have not supported the prosecution case. The blood stains on the clothes of the appellant would naturally be there as he had picked up his son resulting in his clothes getting

stained with the blood of his son. Sita Ram is an 65 years old man. He is hard of hearing and thus would not have heard the quarrel between his son and some third person. The alleged weapon of offence has been planted on the appellant. The same was recovered from an open field accessible to all. Hence he be acquitted of the charge.

3. No defence evidence has been led by Sita Ram and his explanation in his statement under Section 313 Cr.P.C. is:

“I am innocent and have been falsely implicated in this case by the police. I had brought my son Naresh from the village, due to our old age and we needed support. Deceased Naresh had never beaten us. He used to go for work and he used to look after us. He was short tempered so used to quarrelled with the neighbourhood people and other people. I was arrested by the police just to show the case solve. I did not make any disclosure statement. My signatures were obtained by the police, forcibly, which were later on fabricated against me.”

4. The process of law was set into motion on receipt of PCR information which was recorded vide DD No.3A at 12.10 AM on June 18, 2012 at PS Shalimar Bagh from phone number 9136808852 informing that a person has killed his child in front of Haiderpur Ayurvedic Hospital and the caller wants his name to be kept secret. When police reached the spot they found a young boy lying in pool of blood on a bed on the floor with injuries on the head. The name of the boy was revealed as Naresh son of Sita Ram resident of Jhuggi No.H49/354, Ayurvedic Hospital, Haiderpur, Delhi. No eye witness was available on the spot however, it was found that Naresh used to beat his parents due to which Naresh’s father Sita Ram was upset and after the incident Sita Ram had left the house with Kudaal. On the basis of this

information FIR No.162/2012 was registered under Section 302 IPC. Statements of witnesses were recorded including that of the wife of the appellant and mother of the deceased and search. During investigation on the same day Sita Ram reached the Police Station and surrendered himself.

5. Pursuant to the disclosure statement of Sita Ram, his blood stained clothes and the weapon of offence Kudaal were recovered at his instance from the Bagh of Chattar Singh, Sheesh Mahal Shalimar, near guava tree. The Kudaal was blood stained. The articles seized from the spot along with the blood stained clothes of Sita Ram were sent for FSL examination vide report Ex.PW-20/A. It was opined that the clothes of Sita Ram and Kudaal had blood group of human origin 'B' group on it which was the blood group of the deceased.

6. Post mortem of the deceased was conducted by Dr.Bhim Singh PW-1 who noticed the following external injuries on Naresh:

- “i. Chop wound measuring 3.5 cm x 1 cm bone deep over the left mastoid region of head.*
- ii. Chop wound measuring into 3.3 cm x 1 cm x bone deep on left parietal region.*
- iii. Chop wound measuring 3.2 cm x 1 cm x bone deep over left temporal region.*
- iv. Chop wound measuring 3.5 cm x 0.5 cm bone deep over left eye brow.*
- v. Chop wound measuring 2.5 cm x 0.5 cm over lower part of left ear lobule through and through.”*

7. On internal examination Dr.Bhim Singh found a cut wound below injury Nos.1 to 4 with depressed communicating fracture of parieto-fronto-

temporal and base of skull. In his opinion the death was due to coma as result of head injury. All injuries were ante mortem, fresh in duration and caused by sharp heavy cutting weapon like axe. Injury Nos.1 to 4 were sufficient to cause death in the ordinary course of nature. He exhibited the post mortem report as Ex.PW-1/A. The matter was referred to him again for subsequent opinion after the recovery of Kudaal at the instance of the appellant and vide his subsequent opinion Ex.PW-1/B he opined that the injuries mentioned in the post mortem report could be possible by the examined weapon i.e. Kudaal. He also clarified that in his post mortem report he inadvertently mentioned the name of deceased as Harish Kumar which in fact was Naresh Kumar. Nothing has been elicited in the cross-examination of this witness.

8. During the course of trial the neighbours, who appeared in the witness box, did not support the prosecution case however, stated that Naresh used to trouble PW-10 and Sita Ram as he used to demand money from them for liquor and quarrelled with them.

9. PW-14 Shatrughan Sengar stated that Sita Ram used to purchase grove land (Bagh) from the contractors of Sheesh Mahal bagh of MCD. They used to grow vegetables in the grove land and used to look after the trees of plum, mangos and guava. This land had been taken from Chattar Singh Thekedar. It is from this very land that the Kudaal was got recovered by the appellant, which fact has also been deposed by Chattar Singh PW-7.

10. This Court is thus left with the testimony of Sahja PW-10, wife of Sita Ram who deposed that Sita Ram is her husband and they had three sons, Naresh being the second son. She stated that Naresh was a bad element who used to consume liquor and did not do any work on permanent basis. He

often quarrelled with her and her husband for money for consuming liquor and used to beat both of them. On the day of occurrence in the morning the deceased Naresh had demanded money from her for liquor and quarrelled with her for the same. Naresh had demanded money because he knew that Sita Ram and Sahja were having ₹1,000/- which they have kept for purchasing new clothes for their grandson and for arranging return ticket as he had come in the holidays from the village. On Sahja refusing to give money Naresh had quarrelled with her and had beaten her. She along with her grandson Manjeet went to grove land (bagh), where her husband was working as farmer and told about the occurrence of beating by Naresh to Sita Ram. Thereafter her husband left from the Bagh. After some time she came to the house and fell asleep. On hearing the noise of quarrel she woke up and also awoke Sita Ram who was sleeping beside her. After opening the door of the room, he went to the room of Naresh and saw that Naresh was bleeding and struggling for his life.

11. Sahja has supported the prosecution case in all aspect but she blurred on the aspect of who committed the crime. Even as per Sahja both Sahja and Sita Ram were present in the house when she heard the noise of quarrel whereafter Naresh was found bleeding and struggling for his life. She does not say who entered the premises. It is also her case that both of them, i.e. she and her husband were annoyed with the conduct of Naresh and just before the incident she had complained to her husband about Naresh beating her whereafter Sita Ram came home. In a two room tenement, as is evident from the site plan, there is no averment that there was access to anybody from outside especially when everybody was sleeping in the house. Despite this incident happening in the house and admittedly Sahja and Sita Ram

seeing their son in this condition, no PCR call was made by them and when police reached the spot Sita Ram was not present. The version of Sahja to the extent that she woke up on hearing the quarrel and also awoke Sita Ram who was sleeping beside her is obviously to save her husband however, the fact that the incident happened when only three of them, i.e. Sita Ram, Sahja and Naresh were in the house and there was no third person, the onus shifts to Sita Ram to explain how injuries were received to Naresh. No explanation on this account has been rendered in the statement under Section 313 Cr.P.C or by suggestion to the witnesses.

12. The prosecution case that Sita Ram committed the murder of Naresh is further proved by the recovery of blood stained clothes and Kudaal, the weapon of offence which was also blood stained, at his instance. Though learned counsel for the appellant has sought to contend that the clothes were blood stained because the appellant picked his son however, there is no material on record to prove this fact. Further, neither Sita Ram made any call to the police nor was present when the police reached the spot. This conduct of the appellant which is incompatible to his innocence coupled with the recovery of the blood stained clothes and weapon of offence in our opinion the prosecution has proved beyond reasonable doubt the offence committed by inflicting injuries to Naresh having been caused by Sita Ram.

13. The issue then arises is whether the appellant is guilty of offence under Section 302 IPC or 304 IPC. As per Sahja on the date of incident Naresh demanded money from him as he knew that Sita Ram and Sahja had ₹1,000/- with them which fact is also proved from the testimony of Shatrughan Sengar PW-14 who stated that Sita Ram had retained ₹1,000/- which included his share of ₹500/- as he had to purchase clothes and tickets

for his grandson who had come from the village during summer vacations. It is on the complaint of Sahja that Sita Ram came and quarrel ensued between the father and the son resulting in the injuries on the head of Naresh. The act of Sita Ram being on a sudden quarrel between the two of them without any premeditation on being fed up with the behaviour of his son Naresh of not earning but quarrelling and beating his parents on the demand of money not being in fulfilled and by weapon available at home which Sita Ram was using to plough the fields. The offence would thus be culpable homicide not amounting to murder and the appellant is liable to be convicted for the offence punishable under Section 304 Part-I IPC. The conviction of Sita Ram is altered to one under Section 304 Part-I IPC. Sita Ram is directed to undergo Rigorous Imprisonment for a period of ten years and to pay a fine of ₹1,000/- and in default of payment of fine to undergo Simple Imprisonment for 15 days.

14. The appeal is accordingly disposed of.

15. T.C.R. be returned.

16. 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

OCTOBER 10, 2014
‘vn’