

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

+ **Crl. MB No. 1369/2010 in Crl.A. No.1151/2010**

% **Date of Decision: 16.11.2010**

Sanjay @ Vicky Appellant
Through Mr.Rameshwar Dayal, Advocate

Versus

The State (NCT of Delhi) Respondent
Through Mr.Lovkesh Sawhney, APP

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR.JUSTICE S.L.BHAYANA

- | | | |
|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

*

Crl. MB No. 1369/2010

This is an application under Section 389 read with Section 482 of the Criminal Procedure Code for suspension of appellant's sentence and to release him on bail. The appellant/ applicant has been convicted and sentenced in Sessions Case No.14 of 2009, tilted as 'State v. Sanjay @ Vicky' by order of conviction dated 18th August, 2010 and by order dated 27th August, 2010 sentencing him to life imprisonment and a fine of Rs.20,000/- for the offence under Section 302 of Indian Penal Code and in default of payment of fine to further undergo simple imprisonment for a period of one year.

The appellant/applicant has contended that he has a very good prima facie case in his favour. The appellant/applicant has asserted that the balance of convenience lies in his favour and he will suffer irreparable loss and injury in case the order of sentence dated 27th August, 2010 is not stayed.

The appellant/applicant has further contended that he is in custody since 5th November, 2008 and his latest nominal roll dated 9th November, 2010 reveals that he has already undergone 1 year 11 months and 27 days of custody and he has earned remission of 10 days and his jail conduct has also been satisfactory. It is also asserted on his behalf that his appeal is not likely to be heard in near future.

The respondent has filed the status report stipulating that on 10th October, 2008 an information was received about suicide being committed at 34/459 Trilokpuri, Sai Baba Mandir, and on reaching the spot the ground floor of the house was found to be opened having a decomposed female dead body inside the diwan. The deceased was identified as Sangeeta, the daughter of Sh. Suresh Kumar and she was married to the appellant/applicant one year back and was living with the appellant/applicant at the said house on rent. The father of the deceased had disclosed before the Executive Magistrate that his daughter was harassed for dowry. The mother of the deceased had also disclosed that the mother-in-law of her daughter had come to their house and had demand dowry.

The appellant/applicant was arrested on 4th November, 2008 and he had confessed to the killing of his wife on the night of 7th October, 2008 by strangulating her and thereafter putting her body in the box of the diwan and then her wrist and throat were cut with a shaving blade. The accused had then closed the box of diwan and had fled after locking the house. The shaving blade by which the wrist and the neck of the deceased were cut was recovered at his instance and the trial court after considering the evidence and the documents had convicted the appellant/applicant.

Learned counsel for the appellant has very vehemently contended relying on the testimony of the Dr. Vinay Kumar Singh who was examined as PW-11 that since no abnormality was found in the brain of the deceased and the said witness also admitted that whenever any body feels shock, brain receives and retains such shock immediately, therefore, had the deceased's wrists and neck been cut, there would have been an abnormality in the brain which was not there and this deposition belies the allegation of the prosecution. According to him, brain haemorrhage cannot cause of the shock.

Learned counsel also contended that had there been any shock to the brain there would have been changes observed in the neurons in the brain. Learned counsel, however, is unable to show any medical treatises in support of his contention. The plea of the learned counsel is based on his own assumption and on the basis of the same, it cannot

be held that the deceased had not died as was propounded by the prosecution. The neck and the wrists of the deceased were also found to be cut and in the circumstances on the basis of the deposition of PW-11, as has been interpreted by the learned counsel, it cannot be inferred that the neck and the wrists of the deceased were not cut. Rather Dr. Vinay Kumar Singh, PW-11 had admitted that in his opinion the cause of death was due to shock and haemorrhage consecutive upon cut throat injuries and incised injuries Nos.1 to 3 which was described as incised wound over middle front of neck; another incised wound horizontally placed over right wrist and incised wound horizontally placed over front of left wrist joint.

Learned counsel has also emphasized that FSL report reveals that three 'Gatharis' (bundle of clothes) did not have the blood of the deceased. It has also been contended that relying on one of the FSL report that though human blood was found on the steel container wooden pipe, however, blood grouping was not done and in absence of blood group of the appellant, he cannot be inculpated with the alleged crime.

From the perusal of the record, it is evident that from the accused a black colour bag was recovered and from the bag 1 key, 18 torn pages of diary, one paper receipt issued by Shri 1008 Swami Turiyanand Satsang Sewaashram of Rs.150/- dated 18th October, 2008 were recovered. On the back of the receipt, the appellant had written his

confession. One wooden mala and the weapon of offence were also recovered at his instance. The sample handwriting and signature of the appellant were taken and the writing and signature at the back of the receipt were compared and the handwriting expert has opined that the person who wrote the writing and signature at the back of the receipt was also the writer of the specimen writing and specimen signatures.

Writing on Ex.PW-9/A at the back of the receipt issued by Shri 1008 Swami Turiyanand Satsang Sewaashram is as follows:

(I am Sanjay "I have killed Sangeeta. Reason is infidelity (mistake of her father, mother and sister) and I love her so much like Shiv and Parvati" I have committed offence in the fit of rage but could not learn to live without her so I will suicide. I kill myself. Thank Sanjay").

According to the learned counsel for the appellant the writing could not be relied on as the specimen handwriting were taken contrary to the provision of law and he has relied on (2007) 7 JCC 1617 relying on Sukhvinder Singh v. State of Punjab, (1994) 5 SCC 152.

The learned counsel for the appellant/applicant was asked whether the specimen handwriting taken by the police official under Section 4 of the Identification of Prisoners Act, would be admissible or not, has not been answered by him. The learned counsel is also unable to disclose whether the sample handwriting taken under Section 4 of the Identification of the Prisoners Act would be covered under the said provision or not.

Per contra the learned Additional Public Prosecutor has relied on *Puran Mal v. Director of Investigation (Inspection)*, (1974) 1 SCC 345 to contend that in India relevant evidence cannot be excluded merely on the ground that it is obtained by illegal search or seizure or contrary to the provisions of certain Act where the consequence of not complying with the provisions are not provided. Where the test of admissibility of evidence lies in relevancy, unless there is an express or necessarily implied prohibition in the Constitution or other law, evidence obtained as a result of illegal search or seizure is not liable to be shut out. The learned counsel for the State has also relied on *State (NCT of Delhi) v. Navjot Sandhu*, (2005) 11 SCC 600 to contend that non compliance or inadequate compliance with the provisions of an enactment does not per se affect the admissibility unless the consequences of non compliance or inadequate compliance have been spelt out specifically.

The precedent relied on by the learned counsel for the appellant is also not applicable and is clearly distinguishable. In *Sukhvinder Singh* (supra) relied on by the learned counsel, the specimen writings of Sukhdev Paul were taken under the directions of Tehsildar, Executive Magistrate. No enquiry and trial in this case were pending in the Court of the Tehsildar, Executive Magistrate. The enquiry and trial in this case were pending under TADA before the Designated Court only. The Hon'ble Judges in these circumstances were of the view that the direction given by the Tehsildar, Executive Magistrate to the appellant

to give his specimen writings was clearly unwarranted and not contemplated or envisaged by Section 73 of the Evidence Act and consequently such sample handwritings and signatures were not considered. The learned judges had laid emphasis on the application of S. 73 of the Evidence Act in light of the proceedings pending before a court and a direction issued by the same. There were also inherent ambiguities as to the fact of the letters reaching the hands of the police officials, as the prosecution's explanation for the same was opposed by the mother of the deceased. These are not the facts in the case of the appellant and in the circumstances, it cannot be contended that the sample handwriting and signatures taken from the appellant could not be considered for comparison of writing and signatures on the back of the receipt which was recovered from the bag of the appellant confessing that he has murdered his wife.

For the foregoing reasons, it cannot be held that the receipt with the admission of the appellant in his writing that he had killed his wife Sangeeta on account her infidelity will not be admissible and cannot be relied on as has been contended on behalf of the appellant. The version of the prosecution is that the deceased was throttled by the appellant/applicant and then her body was stuffed in a box and his neck and wrist were cut by a blade. In the circumstances, it cannot be held that all the clothes would be stained with the blood and three of the articles as pointed out by the learned counsel for the

appellant/applicant do not have human blood, will not be sufficient to show prima facie that the appellant/applicant was not involved in the matter.

The learned counsel has very emphatically contended that what was recovered from the appellant/applicant was a belt and not a bag relying on testimony of PW-9 Gagan Kumar. In the circumstances, it is contended that the recoveries of the papers of diary and the receipt containing admission on the part of the appellant/applicant have not been established. However, perusal of the testimony of PW-9 Gagan Kumar clearly stipulates that bag was recovered from the appellant/applicant containing some papers. Although it has also been incorporated that the appellant/applicant was holding a belt but that appears to be a typographical mistake as the paper etc. and other things which were recovered from the appellant/applicant could not be from the belt but were from the bag as has also been deposed by the said witness. In any case, the appellant/applicant would not be holding a belt and it must be that he was holding a bag. In any case in the facts and circumstances, prima facie it cannot be held that the bag was not recovered from the appellant/applicant so as to doubt that the other papers and the receipt containing admission of the appellant/applicant were not recovered from him.

The suspension of sentence is also sought on the ground that the appellant/applicant has already undergone sentence of about 2 years

and he is the only son of his parents and the appeal is not likely to be heard in the near future. This cannot be a ground to suspend the sentence. The Court is hearing the appeals of 2010 where accused are under custody and in the circumstances the appellant/applicant cannot contend that his appeal of 2010 is not likely to be heard in near future and on this ground, the sentence of the appellant cannot be suspended nor is he entitled to be released on bail.

In the totality of the facts and circumstances and considering the brutal manner in which the murder of the wife of the appellant/applicant was committed by throttling her and stuffing her body into the trunk and cutting her wrists and neck with a blade, this Court is not inclined to suspend the sentence of the appellant and to release him on bail. The application is therefore, without any merit and it is dismissed.

ANIL KUMAR, J.

S.L.BHAYANA, J.

NOVEMBER 16, 2010

‘VK’