

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

% *Judgment Reserved on : July 07, 2014*
Judgment Pronounced on : August 12, 2014

+ **CRL.A. 1172/2012**

BUBAY @ MAYA Appellant
Represented by: Mr.Sidharth Agarwal Advocate with
Mr.Kumar Vaibhav, Advocate

versus

STATE Respondent
Represented by: Ms.Aashaa Tiwari, APP
SI Roshan Lal, PS Nangloi

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. Bubay @ Maya is a transgender. She was living with Ramu as his wife in a room at No.RZ-C-213, Ambika Enclave, Nihal Vihar, Nangloi, Delhi. Ramu was earning his livelihood by plying a cycle rickshaw. On February 22, 2008 he died due to haemorrhagic shock occasioned by excessive bleeding. The place where he received the injury was the room in which he resided with Maya. The injury was caused with the knife Ex.P-5. Maya was present in the room when Ramu was stabbed.

2. Post mortem report of the dead body of Ramu was conducted on February 23, 2008 by Dr.Manoj Dhingra at Sanjay Gandhi Memorial Hospital. A solitary injury being an incised penetrating wound on front of chest, left side 8 cm below left nipple 4 cm lateral to mid-line was found. After piercing the intercostal muscle between the 8th and the 9th intercostal muscle, the knife entered the plura of the left lung and proceeding ahead cut

the left ventricle. The post mortem report Ex.PW-7/A would evidence that the direction of the knife was inwards from the left side of the chest towards the right side. Dr.Manoj Dhingra PW-7 denied the suggestion during cross-examination that the injury could be self-inflicted. He rightly answered that a right handed person could not injure himself in the manner the injury was caused.

3. When incriminating circumstances were put to Maya she claimed that Ramu was alcoholic and short tempered. On the day of the incident he insisted on cooking meat. It being a Friday she objected. In anguish he caused injuries to himself. She shouted and called her neighbour Sonia, on whose advice she called Shibu Yadav, the brother-in-law of Ramu. Ramu was taken to the hospital where he was declared brought dead.

4. The learned Trial Judge has disbelieved the explanation given by Maya. Though not expressly stated in the impugned decision, convicting Maya for the offence of having murdered Ramu, the reasoning is that where presence of two persons is proved at the spot and one of them suffers a homicidal death, the other must satisfactorily explain how the death occurred. In the absence of a satisfactory explanation the presumption of guilt has to be raised.

5. Well, the case is as simple as that. Maya having admitted her presence in the room when Ramu was stabbed and the explanation that Ramu stabbed himself being not acceptable, that Maya was the person who caused the injury has to be held to be proved.

6. But since we are dealing with the case of murder we briefly captured the evidence led.

7. Process of law commenced its journey when at 12.40 in the intervening night of February 22, 2008 and February 23, 2008 duty Ct.Vijender Singh at Sanjay Gandhi Memorial Hospital informed the duty

officer at P.S.Nangloi that Ramu son of Ram Narain, resident of RZ-C-213, Nihal Vihar had been brought in an injured condition to the casualty by his wife Maya, which fact was noted in DD No.2.

8. The investigation was entrusted to ASI Mohinder Singh PW-19, who accompanied by Ct.Vijender Singh PW-12 went to Sanjay Gandhi Memorial Hospital and collected Ramu's MLC Ex.PW-6/A prepared by Dr.Renu Lalheria which recorded that the patient was brought dead and was shifted to the mortuary of the hospital for a post mortem examination. A stab injury on the left side of the chest was noted by Dr.Renu Lalheria.

9. Making an endorsement Ex.PW-18/A beneath DD No.2, ASI Mohinder Singh got registered the FIR Ex.PW-8/A for the offence punishable under Section 302 IPC notwithstanding Maya claiming that Ramu had inflicted injuries on his chest himself. He proceeded to the place where the incident took place and formally arrested Maya and drew up the arrest memo Ex.PW-13/A. He claimed that Maya got recovered a maxi and petticoat stained with blood. He claims that at Maya's pointing out he also recovered a sweater and a cream coloured pant which were stained with blood and as told to him were the clothes worn by Ramu when he suffered the injury.

10. At the trial Sajjan Mehto PW-1 deposed that he was residing at RZ- C-213, Ambika Enclave, Nihar Vihar, Nangloi and had gone to work in the morning. On his return to the house he learnt that Maya had killed her husband. He did not support the case of the prosecution that he was present in the house and had heard a noise from the room where Maya and Ramu resided and that he heard Maya say that during a quarrel Ramu had caused the injury to himself when under the influence of liquor.

11. Sonia PW-2, the wife of Sajjan Mehto, deposed that she heard a noise from the room where Maya and Ramu were residing. She came out

and knocked at the room which was locked from inside. Maya opened the door and she saw Ramu lying in an injured condition. Blood was oozing from his body. Both Ramu and Maya were under the influence of liquor. She asked Maya to call relatives of Ramu and within 5 -10 minutes Shibu, brother-in-law (PW-4) of Ramu reached. She deposed that Ramu and Maya used to quarrel with each other.

12. Shibu PW-3 deposed that Ramu was his brother-in-law and was earning his livelihood by plying a rickshaw. Four months prior to the incident he started residing with Maya in a rented room at RZ-C-213, Ambika Enclave, Nihal Vihar, Nangloi, Delhi. Maya came to his room which was nearby and told him that Ramu had inflicted injuries on himself. At that time Maya was under the influence of alcohol. He took his brother-in-law to Sanjay Gandhi Memorial Hospital where the doctor declared him dead. He deposed that in his presence Maya got recovered a blood stained pant and a blood stained sweater worn by Ramu when he was injured which was entered in the seizure memo Ex.PW-3/D. He said that Maya was wearing a maxi Ex.P-1 and a petticoat Ex.P-2 which was stained with blood when she came to his house. Surprisingly in the next paragraph of the deposition of the witness it is recorded that the Maxi was Ex.P-3 and the petticoat was Ex.P-4. He said that he could not identify the knife Ex.P-5.

13. Dr.Manoj Dhingra PW-7 deposed that he conducted the post mortem on the dead body of Ramu on February 23, 2008 and prepared the post mortem report Ex.PW-7/A. He said that the Investigating Officer produced two sealed packets with seal of MS, one contained a knife and the other a sweater and a pant. He prepared the sketch Ex.PW-7/C of the knife and gave an opinion Ex.PW-7/B that the injury on Ramu could be caused by the said knife. He said that the cut mark on the sweater could have been caused by the knife which was sent to him for opinion. During cross

examination he denied the suggestion that the injury could be self-inflicted.

14. HC Jai Bhagwan PW-8 deposed having registered the FIR Ex.PW-8/A.

15. HC Vijender Singh PW-12, who was a constable on the day of the incident and had accompanied ASI Mohinder Singh to the hospital after DD No.2 was registered at PS Nangloi deposed that accompanied by ASI Mohinder Singh he went to Sanjay Gandhi Memorial Hospital where ASI Mohinder Singh collected the MLC of the deceased. The body had been shifted to the mortuary. Statement of Maya was recorded. He came back to the spot. Crime team was called. On February 23, 2008 he and Mohinder Singh went to the mortuary of Sanjay Gandhi Memorial Hospital where the relatives of Ramu identified his dead body and thereafter post-mortem was conducted and that after the post-mortem the doctor handed over Ramu's clothes as also a sample blood gauze bearing seal of SGMH which he deposited in the Malkhana.

16. ASI Nepal Singh PW-15 deposed that on learning of the incident he along with the SHO came to the spot where ASI Mohinder and HC Vijender were present. Maya was arrested vide Ex.PW-3/A. From the spot Maya produced a maxi and a sky blue coloured petticoat as also a vegetable cutting knife which were seized vide memos Ex.PW-15/A, Ex.PW-3/D and Ex.PW-15/B. The maxi was Ex.P-3 and the petticoat was Ex.P-4. The sweater was Ex.P-1 and the pant was Ex.P-2. The knife was Ex.P-5.

17. Insp.Samay Singh PW-18 deposed in sync with ASI Nepal Singh PW-15.

18. ASI Mohinder Singh PW-19 also deposed in sync with ASI Nepal Singh PW-15 and Insp.Samay Singh PW-18.

19. The FSL Report Ex.PW-9/A and Ex.PW-9/B would evidence that human blood of Group 'A' was detected on the maxi, petticoat, sweater and

the pant as also the blood stained gauze cloth piece.

20. Before we deal with the testimony of the witnesses we would highlight that the Investigating Officer has fabricated the seizure memos Ex.PW-3/D and Ex.PW-15/A wherein it is recorded that Maya got recovered the maxi and the petticoat which Maya was wearing at the time of the incident and on which blood was detected and that Maya got recovered the sweater and the pant which the deceased was wearing.

21. From the testimony of Sonia PW-2 and Shibu Yadav PW-3 it is apparent that Maya had no time to change the clothes which Maya was wearing at the time of the incident and further Maya had no time to remove the pant and the sweater worn by Ramu. Maya had no occasion to hide the said clothes. HC Vijender Singh PW-12 has categorically deposed that after PW-7 conducted the post mortem on the dead body of Ramu he handed over a pant and a sweater worn by Ramu which were in a parcel bearing the seal SGMH. The FSL Report Ex.PW-9/A would evidence that the parcel containing the clothes of the deceased was wearing the seal of 'SGMH' Mortuary Mangol Puri, Delhi-83. It is unfortunate that the Investigating Officer went about fabricating seizure memos.

22. The testimony of Sonia PW-2 would bring out that Maya and Ramu used to drink and quarrel. The testimony of Sajjan Mehto, the husband of Sonia Mehto would bring out that Maya and Ramu were living as husband and wife. The testimony of Sonia would bring out that the two used to quarrel with each other after consuming liquor and when the incident took place Maya and Ramu were under the influence of liquor. There was a quarrel between the two. What happened inside Sonia could not see, but it is apparent. During a quarrel when both were intoxicated, Maya stabbed Ramu.

23. That Maya inflicted one stab wound on Ramu under influence of

alcohol which was preceded with a quarrel would show that Maya acted upon a sudden quarrel at the spur of the moment. Maya picked up a handy knife. The knife sketch whereof is Ex.PW-7/C would show that it is an ordinary kitchen knife having a blade of 11 cm length and handle of 10 cm length. The blade tapers with maximum width 1.6 cm at its base with the handle and a pointed tip at the other end.

24. The offence committed by Maya is therefore not murder. The offence committed is culpable homicide not amounting to murder punishable under Section 304 Part II IPC for the reason there is no evidence that Maya had any motive to kill Ramu. Maya was not carrying the knife and picked it up during a quarrel. The probable cause was the case of the prosecution itself evidenced from the line of cross examination by the learned APP of Shibu Yadav PW-3 to whom it was suggested that he had told the police when his statement under Section 161 Cr.P.C. was recorded that at around 7:00 PM on February 21, 2008 Ramu had met him at Nihal Vihar Market and he was under the influence of liquor and was carrying a packet of meat. When examined under Section 313 Cr.P.C. Maya has said that the quarrel took place because Ramu was insisting on cooking meat and it being a Friday, Maya objected. In the Northern part of India many people do not cook or eat non-vegetarian food on Fridays. It is apparent that Maya was wanting to prevent Ramu from cooking meat on a day which Maya considered as an auspicious day. The ratio of law declared by the Supreme Court in the decision reported as (2009) 17 SCC 433 Muthu Vs. State of Tamil Nadu is clearly attracted.

25. Since February 25, 2008 Maya is in judicial custody. The period of detention already undergone by Maya is six years five months and fifteen days. Maya has earned a remission of one year and four months.

26. Under the circumstances, we dispose of the appeal convicting

Maya for the offence punishable under Section 304 Part II IPC and as regards the sentence we direct that the period already under gone by Maya would be the sentence to be suffered by Maya.

27. Two copies of this decision be sent to the Superintendent, Central Jail Tihar. One for his record and the other to be supplied to Maya who is in judicial custody.

28. TCR be returned.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

AUGUST 12, 2014

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