

\$~R-45A (Part-A)

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

% **Date of Decision: 26th August, 2015**
+ CRL.A.302/2012

HANS RAJ @ SONU Appellant
Through: Mr. Chetan Lokur, Adv.

versus

STATE Respondent
Through: Mr. Varun Goswami, APP

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.K.GAUBA

SANJIV KHANNA, J (ORAL)

1. Hansraj @ Sonu impugns judgment dated 6th June, 2011, convicting him for murder of his wife Santosh in the intervening night between 16th and 17th April, 2009, in the tenanted room located on the ground floor of House No.A-5, B Block, Gali No.11, near Geeta Bhawan Mandir, Badli Extension, Delhi. By the order on sentence dated 6th June, 2011, the appellant has been sentenced to life imprisonment along with fine of ₹5,000/- for the offence under Section 302 of the Indian Penal Code, 1860 ("IPC" for short). In default, the appellant has to undergo simple imprisonment of two months. Benefit of Section 428 of Code of Criminal Procedure, 1973 (Cr.P.C., for short) is directed to be given.

2. The post-mortem report of Santosh marked Ex.PX establishes homicidal death as a result of multiple incised wounds, about nine in number, of which two were sufficient to cause death in the ordinary

course of nature. The cause of death as opined was hemorrhagic shock consequent upon injuries to the heart and liver by a sharp, cutting and penetrating weapon. Injuries No.3 and 8, i.e. incised penetrating wound 3 x 1 x 2 cm with tailing at upper angle of wound, placed vertical over midline about 7 cm below supra sterna notch and the incised wound penetrating wound 3 x 1.8 cm on right side chest at mid clavicular line about 1 cm above lower costal margin, were sufficient to cause death in ordinary course of nature, individually or collectively. The injuries were ante-mortem in nature

3. On the question of date and time of the occurrence and involvement of the appellant, we have the testimonies of Master Rishi (PW-3) and Raj Kumar (PW-4), in addition to the assertions by the police witnesses who had reached the place of occurrence immediately after the violence had occurred. Master Rishi (PW-3), son of the deceased and the present appellant, was above five years of age at the time of occurrence and seven years of age when his court testimony was recorded on 10.02.2011. Master Rishi (PW-3) claims and asserts that he was sleeping in the room where the occurrence took place with his mother Santosh. His father came at night and started quarrelling with his mother. His father was drunk and had abused his mother using filthy language. He had seen his father stabbing his mother after catching her hair. He had hidden under the bed as he was afraid that he too would be killed. The appellant had stabbed his mother four times with a knife and thereupon, his mother had fallen down. His mother had shouted for help and some persons had chased the appellant. The said persons had come after hearing the cries of his mother and had opened the door of the room. His father had then fled away. He identified his father i.e. the

appellant Hans Raj who was sitting in the Court when his deposition was recorded on 10th February, 2011.

4. Learned amicus curiae has drawn our attention to the cross-examination of Master Rishi (PW-3) and that the said child witness had not answered several questions in his cross-examination. It is highlighted that even Court questions were not answered. It is submitted that the version given by Master Rishi being tutored and unreliable, should not be accepted. We have examined the cross-examination of PW-3 which for the sake of convenience is reproduced in entirety.

“I am having one sister. We are both living together. When my mother was alive, at that time also, I and my sister were living together. It is incorrect to suggest that I was tutored by my maternal grandparents (Nana and Nani). I has seen the incident and hidden myself underneath the bed. It was double bed having boxes.

Q. Do you understand what is truth and what is lie?

The witness is not answering.

Today, I have come from the house of my Nana. I obey my maternal grandparents. My Nana had told me to depose in the Court. I have deposed whatever has been told by my Nana to me.

Q. You have stated in the court that you have seen the incident because it was told by your Nana that you have to state this in the court?

The witness is not answering.

It is incorrect to suggest that I have not seen the incident or that I was not present at that time or that I am deposing falsely.”

5. A reading and perusal of the cross-examination indicates and reflects the mental trauma and stress which Master Rishi (PW-3) faced when he had deposed in the court in front of his father implicating him for the murder of his mother. At that time, he was living with his sister in the house of his maternal grandparents. He, as was natural, had come to the Court with his maternal grandfather. He did not hesitate and accepted that his grandfather had asked him to depose and that whatever he had deposed was told to him by his grandfather. At the same time, he has asserted that he had narrated the facts as to the incident as he had seen them. In spite of his silence and hesitation, we do not think that we should erase and ignore the facts narrated by Master Rishi (PW-3) in his examination-in-chief. It would have been difficult for PW3- a minor child about seven years of age to answer a philosophical question put to him in the initial portion of the cross-examination i.e. ‘What do you understand what is a truth and what is lie?’. This obviously confounded and over-awed the juvenescent witness, who was a soft target and unable to answer the crafty question. The said question should not have been put and allowed, keeping in view the tender age. (see *Virender v. State of NCT of Delhi* 2010 III AD (D.H.C.) 342). After the said question was put to PW3, he got flummoxed and intimidated and was unable to answer the court questions. To us, it is apparent that PW3 got perplexed and startled in the Court. His nervousness and fluster is apparent. Presence of Master Rishi (PW-3) at the spot is natural and normal. He is not a planted witness who would depose to implicate his

father, when the actual perpetrator was a third or even an unknown person. PW's version on facts and as to the identity of the perpetrators gets corroboration from the statements made by Raj Kumar (PW-4) and SI Sukan Lal (PW-14). Maternal grandfather-Mahender Pal Singh (PW-11) and maternal grandmother-Kamlesh (PW-13) have also deposed affirming PW3's presence. They have also spoken about the motive behind the occurrence.

6. Raj Kumar (PW-4), landlord of the building A-5, Badli Extension near Geeta Bhawan Mandir, Delhi, had rented one room on the ground floor to the present appellant. The appellant was staying in the said room with his wife and one child named Rishi i.e. PW-3. On the said night, PW-4 was sleeping on the first floor when at 11 P.M., he saw that 25 to 30 persons had gathered and were making noise. He had heard Santosh crying loudly. PW4 had also heard the appellant shouting that he would take her life. The persons present were trying to open the door which was bolted from inside. They had succeeded in forcibly opening the door and the appellant was seen having a knife in his hand. The appellant waived the knife in the air and even in their presence, had given knife blows to Santosh. Thereafter, the appellant ran away. Santosh, who had suffered stab injuries, died after 3 to 4 minutes. Blood had spilled and could be seen in the room. Master Rishi (PW-3) who was present was weeping and crying that his father had killed his mother. The police control room was informed by PW-4 from the phone of his father, who was also residing on the ground floor of the same building. The appellant was caught by the public near the ring road where the PCR van was also present. The appellant was drunk at that time and was wearing dirty clothes.

7. Learned counsel for the appellant had submitted that PW-4 was on medication as he was habituated to sleeping pills. Our attention is also drawn to the fact that Raj Kumar (PW-4), in his cross-examination, has accepted that he (PW4) went downstairs and sat on the slab of water motor situated in the gali outside his house. PW-4, in his cross-examination, could not give the name of the persons who had gathered and had broken the door of the room. A specific reference was made to PW-4's statement that he had seen the appellant inside the room waving the knife. Contradiction in the two versions is highlighted. We agree with the counsel for the appellant that Raj Kumar (PW-4) possibly may not have seen the appellant actually inflicting knife injuries on his wife Santosh, but PW-4 was present at the spot when the public had broken open the door of the room and at that time, the appellant was seen with a knife in his hand. The appellant had waived the knife and ran away. He was caught by the public and brought back in the PCR Van at about 11.45/12 P.M. midnight. The appellant was drunk. It is apparent that violence and injuries were caused behind the closed door, where the appellant, the deceased and PW3 were present. The appellant alone was the perpetrator. Given the location of the room and that Raj Kumar (PW4) was the landlord residing in the same building, his presence is natural and should be accepted. We should not disbelieve and reject PW4's testimony for the reason that he was on medication. Noise and shouting had jolted him from his sleep.

8. Mahender Pal Singh (PW-11) and Kamlesh (PW-13) have stated that their daughter Santosh was married to the appellant and they had two children, namely Rishi (PW-3) and Anjali. Anjali was residing with them, whereas Rishi used to reside with his parents in the property in

question. They have also set out in detail, the differences between the appellant and the deceased and that, at about midnight, they had received a call from the Police Station Badli that their daughter Santosh had been killed by the appellant with a knife. They had reached the spot and inspected the room in question where blood could be seen scattered on the bed, walls, almirah and other articles. Rishi (PW-3) was present there with the landlord i.e. Raj Kumar (PW-4). The appellant had been apprehended and was handed over to the police.

9. The arrest memo of the appellant marked Ex.PW-14/I, records the place of arrest as Rohini, Jail Road, near petrol pump, Delhi and the time of arrest as 4.30 AM. We have some doubts on the time and place of arrest as mentioned in the said arrest memo in view of the clear deposition of Raj Kumar (PW-4) that the appellant had tried to run away but was caught by the public. A PCR Van was present near the spot and subsequently the appellant was handed over to the police. Presence of the appellant is also affirmed by Mahender Pal Singh (PW11) and Kamlesh (PW13). This discrepancy in the prosecution version, in our opinion, would not materially affect our conclusion that the appellant is guilty. SI Rajender Singh (PW-19), who was then posted as ASI in the Police Control Room, outer zone in IC van LB89, has deposed that a call at about 11.23 PM was received informing that at Geeta Bhawan, A-5, Badli one person had stabbed his wife. He along with others had accordingly proceeded to the said spot. On the way, some persons had surrounded their van and informed that one person had fled away after stabbing his wife. He had chased and apprehended the appellant Hans Raj with the help of his staff and public. They brought the appellant to the place of occurrence and he was handed over to the local police. PW-

19 has deposed that a boy aged about 4 – 5 years old was present near the dead body of the deceased. SI Rajender Singh (PW-19) has stated that the appellant, at that time, appeared to be under the influence of liquor and was wearing dirty clothes. PW-19 could not depose as to whether at that time, the appellant was wearing blood-stained clothes. The last statement would only reflect memory loss and not falsity as to the core and main assertions. Presence of blood on the clothes of the appellant and seizure of blood-stained clothes vide seizure memo Ex.PW14/O is asserted by SI Sujan Lal (PW14). Importantly, FSL report (marked Ex.PY) mentions that human blood of group A was found on the clothes worn by the appellant i.e. his vest, pants and T-shirt.

10. The appellant, after his arrest, was taken for medical examination to Babu Jagjivan Ram Memorial Hospital at about 7.30 PM on 17.04.2009. The said MLC (Ex.PW-6/A) was proved by Dr. Gopal Krishna (PW-6). The MLC records that the appellant Hans Raj was brought by Constable Babu Prasad (PW-9) and had been beaten by the public as was told by the patient himself. The appellant had a lacerated wound on the occipital region and right hand index finger. He had tenderness and swelling on the right foot and leg and some abrasions. There was some delay in taking the appellant for medical examination as the facts establish that the appellant was apprehended and given beating near the place of occurrence.

11. Learned counsel for the appellant has submitted that other public persons could have deposed as to the occurrence. We do not think that there was a need or requirement to join all persons present at the spot.

In fact, Mani Ram (PW-5), father of Raj Kumar (PW-4) had appeared as PW-5 but was dropped after noticing that the said witness was suffering from paralysis and due to old age, was unable to depose. Section 134 of the Indian Evidence Act is an answer to the contention raised as it stipulates that “no particular number of witnesses shall in any case be required for the proof of any fact”.

12. Constable Manoj (PW-2) had deposed that on receipt of DD No.36A, he with constable Manoj had reached the spot and had seen dead body of a lady lying in a pool of blood. He had also seen some hair lying near the fridge. The name of the deceased was Santosh and her son aged 4 ½ years was present at the spot. In the cross-examination, PW2 has accepted that SI Suman Lal had made enquiries from the lady who was taking care of the child. This lady has not been examined, but this does not dent or affect the prosecution case. SI Suman Lal (PW-14) had similarly deposed that Santosh was found lying dead in a pool of blood and her son aged 4 years was present at the spot. The son was an eye-witness to the occurrence and had narrated the occurrence implicating the present appellant. They had seized the articles/evidence from the spot, which were identified by him and others in the court.

13. The crime team had come to the spot and the mobile crime team report is marked Ex.PW-18/A. Learned counsel for the appellant has submitted that one of the instructions and advice to the Investigating Officer (IO, for short) was that eye witness should be established. The contention is that Raj Kumar (PW-4) was not an eye-witness but is a planted witness and the IO was asked to ascertain and record statements

of the eye witnesses. The assertion in the crime team report (Ex.PW-18/A) that eye-witness should be established does not indicate or reflect that eye-witnesses were not present or had not been ascertained. IO was required to ensure that he records statements of the eye-witness. This assertion affirms presence of eye-witness who had seen the occurrence. Inspt. Sanjay Gade (PW18) in his cross-examination, has stated that the expression “eye-witness be established” was a general direction or to establish more eye witnesses other than the child witness.

14. Constable Kamal (PW-15), a photographer in the crime team, had taken 13 photographs (Ex.PW-15/1 to Ex.PW-15/13). He also produced the negatives of the photographs. The photograph would show that the occurrence had taken place at the room in question

15. Inspector Satbir Singh, IO (PW-20) has deposed that on visiting the spot, blood was found to be scattered on the floor, bed, bed sheet, almirah, walls of the room and near the *tawa*. Son of the deceased, aged about 4 years, an eye-witness to the incident had stated that the appellant had killed his mother. He had prepared the *rukka* and had sent the same for registration of the FIR. He had proved the evidence which was collected from the spot and then shown to him in the court.

16. We have also examined the statement made by appellant under Section 313 of the Cr.P.C. Most of the answers are “I do not know”. The appellant has stated that when he had returned from the shop, he had found his wife in pool of blood. Police brought him to the police station and falsely implicated him. There is therefore nothing to discredit and negate the overwhelming prosecution evidence, implicating the appellant.

17. Having considered the evidence on record in entirety including statement of Master Rishi (PW-3) and Raj Kumar (PW-4), we find that the prosecution has been able to establish and prove the case against the appellant beyond any doubt or debate. In fact, there is substantial and incontrovertible evidence clearly affirming that the appellant had committed murder of his wife on 16th April, 2009 in the tenanted room. The appellant was apprehended after he had fled and was beaten and handed over to the local police.

18. In view of the aforesaid discussion, we do not find any merit in the present appeal and the same is dismissed. Copy of the judgment will be sent to the appellant who is confined and in jail.

SANJIV KHANNA, J

R.K. GAUBA, J

AUGUST 26, 2015/vld