

\$~Part-A (R-6)

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

+ **CRIMINAL APPEAL NO. 355/2012**

Date of decision: 2nd July, 2015

SHASHI

..... Appellant

Through Mr. Chetan Lokur, Advocate.

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):

The appellant Shashi impugns the judgment dated 7th July, 2011, in case arising out of the charge sheet filed in FIR No.157/2008, police station Nabi Karim, Delhi convicting him for the murder of his wife Kavita on 21st November, 2008 at about 3 P.M. in front of Kharbanda Juice Corner, Multani Dhanda, Nabi Karim, Delhi. By order on sentence dated 14th July, 2011, the appellant Shashi has been sentenced to Rigorous Imprisonment for life and fine of Rs.50,000/-. In default of payment of fine, the appellant is to undergo simple imprisonment for one year. Out of the aforesaid fine of Rs. 50,000/-, Rs. 40,000/- , it is directed, would be paid to

Shanti Devi (PW-1), who is the mother of the deceased Kavita as a token of compensation.

2. We have heard the learned amicus curiae and the learned counsel for the State. The primary contention raised by the learned amicus curiae is that the testimony of Shanti Devi (PW-1) is not credible and reliable. No reason is forthcoming regarding the absence of any other eye witness despite the incident occurring in a crowded market place. Our attention is drawn to the testimony of Joginder (PW-5), the proprietor of Kharbanda Juice Corner, who did not witness the murder taking place in front of his shop. It is highlighted that as per the CFSL report marked Ex.PW-17/F, blood could not be detected on the knife (Ex.P-2) or the shirt (Ex.P-1) allegedly worn by the appellant. Our attention is also drawn to the arrest memo (Ex.PW-1/D) and it is submitted that Shanti Devi (PW-1) has testified that the appellant was arrested from Ghaziabad and at that time Shanti Devi (PW-1) was not present. The arrest memo (Ex.PW-1/D), it is highlighted, is signed by Shanti Devi (PW-1) as a witness.

3. We have examined the contentions raised by the learned amicus curiae, but we do not find any reason or ground to reverse or interfere with the judgment of conviction. Shanti Devi (PW-1), mother of the deceased Kavita and mother-in-law of the appellant Shashi is the complainant and the eye witness. We find her testimony to be credible and reliable. Shanti

Devi (PW-1) has truthfully narrated the events, even when they were at some variance with the police version. PW-1 has accepted that the appellant Shashi and her daughter Kavita got married three years ago and after one and a half years of marriage, Kavita gave birth to a baby girl. About six months prior to the occurrence, disputes had arisen between the appellant Shashi and the deceased Kavita. Thereafter, the deceased Kavita had started living with Shanti Devi (PW-1) at AB-241, Amar Puri, Tel Mill Gali, Nabi Karim, Delhi. It is noticeable that the appellant at that time was residing at AB-240, Amar Puri, Tel Mill Gali, Nabi Karim, Delhi. Shanti Devi (PW-1) has deposed that the appellant used to come to her house and threaten Kavita that he would kill her if she would not return to his house.

4. PW-1 has testified that on 21st November, 2008 in the morning, the appellant had come to her house and had tried to forcibly take the deceased Kavita with him. When Kavita refused to go with the appellant, the latter had threatened that he would kill her. On the same day at about 3 P.M., she along with the deceased Kavita had gone to the market to purchase *Dal*. When they reached near the juice corner at Multani Dhanda, Nabi Karim, the appellant came there and gave a knife blow on the neck of Kavita. Thereupon Kavita had tried to apprehend the appellant Shashi, but he gave a knife blow on Kavita's left hand and fled away from the spot. PW-1 then took Kavita to Lady Hardinge Hospital in a three wheeler auto

rickshaw, where Kavita was declared as 'brought dead'. PW-1 made a statement vide Ex.PW-1/A and the FIR in question (Ex.PW-2/A) was registered. PW-1 identified the clothes and sandals worn by the deceased at the time of occurrence, which were marked Ex.P-1 to P-7.

5. We have gone through the cross-examination of Shanti Devi (PW-1) in which the said witness has accepted that no complaint had been lodged by her against the appellant prior to 21st November, 2008. This, to our mind, would not materially affect the testimony of PW-1. It is apparent from the testimony of PW-1 that there were matrimonial disputes between the appellant and the deceased Kavita. It would be farcical and illogical to hold that for accepting the version given by PW-1 regarding the incident or matrimonial disputes, PW-1 or the deceased Kavita should have made a prior police complaint. Shanti Devi (PW-1) in her cross-examination had stated that at the time of the occurrence, Kavita was about 10 steps behind her. She had seen the appellant stabbing her daughter. She, however, clarified that she had not seen the first stab wound being inflicted but she had seen the appellant stabbing her daughter on the second occasion when Kavita (deceased) tried to save herself.

6. The testimony of Shanti Devi (PW-1) as to the occurrence is fully corroborated and supported by the post mortem report (Ex.PW-7/A), which shows external injuries at the neck, shoulder and the forearm of the

deceased. The external injuries referred to in the post mortem report (Ex.PW-7/A) are as under:-

- “1. Incised wound of size 16 cm × 4 cm laryngeal cavity deep situated on the front of neck, extending from left to right side, from a point 5 cm below the left angle of mandible to a point 3.5 cm below the right angle of mandible, cutting the thyroid cartilage, both sternocleidomastoid muscles and right common carotid artery.
2. Spindle shaped incised wound of size 3cm× 1.2 cm× subcutaneous fat tissue deep situated on the tip of left shoulder, in an antero-posterior direction.
3. Incised wound of size 4.8 cm × 1.6 cm × muscle deep situated obliquely on the flexor aspect of left forearm, 8 cm above left wrist joint, extending upwards and medially.
4. Incised wound of size 7.6 cm × 2 cm × muscle deep situated obliquely on the exterior aspect of left forearm, 7 cm above left wrist joint, extending upwards and medially.”

7. The cause of death, as opined by Dr. Devender Kumar Atal (PW-7) was shock as a result of cutting of neck structures including right carotid artery. The said injuries were ante mortem and fresh in nature and could have been caused by a sharp cutting weapon. Dr. Devender Kumar Atal (PW-7) deposed that all the injuries together and external injury No.1 individually, were fatal in the ordinary course of nature. . Dr. Devender Kumar Atal (PW-7) had also examined the knife (Ex.P-2), which was produced before him. Rust stains were found over the blade portion of the knife but no blood stain could be detected on examination of the said

alleged weapon with naked eye. As per the CFSL report (Ex.PW-17/F), blood could not be detected on the knife or the shirt alleged to have been recovered at the instance of the appellant. However, this would not in any way dent the eye witness account given by Shanti Devi (PW-1). Even if we accept the contention of the learned amicus curiae that the weapon of offence was not recovered, the conviction of the appellant Shashi is not required to be interfered with.

8. The Supreme Court in *Umar Mohammad and Ors. Vs. State of Rajasthan* (2007) 14 SCC 711 has held:-

“34. ... In any event, non recovery of incriminating material from the accused cannot be a ground to exonerate them of the charges when the eye- witnesses examined by the prosecution are found to be trustworthy.

35. In *Krishna Mochi and Ors. vs. State of Bihar* 2002 CriLJ 2645, this Court held:

“It has been then submitted on behalf of the appellants that nothing incriminating could be recovered from them, which goes to show that they had no complicity with the crime. In my view, recovery of no incriminating material from the accused cannot alone be taken as a ground to exonerate them from the charges, more so when their participation in the crime is unfolded in ocular account of the occurrence given by the witnesses, whose evidence has been found by me to be unimpeachable.” ”

9. The appellant, as noticed above, was residing in the adjacent property bearing number AB-240, Amar Puri, Tel Mill Gali, Nabi Karim. He was arrested after more than 24 hours on 22nd November, 2008 at about 8 P.M. as per the arrest memo Ex.PW-1/D. The appellant had sufficient time to destroy or conceal the weapon of offence and the shirt or wipe and clean the blood stains thereon. It is apparent that the appellant has been successful.

10. Shanti Devi (PW-1) has deposed that the appellant was arrested from Ghaziabad and at that time, she was not present. Further, the appellant was arrested at the instance of his brother. These are candid and upright statements which reflect the sanctity and conscientiousness of Shanti Devi (PW-1). To this extent, she did not support the prosecution version. Ex.PW-1/D, the arrest memo mentions the place of arrest as 'In gate, New Delhi Railway Station, Paharganj side' and is signed by PW-1 as a witness. We do not see any ground or reason to acquit the appellant for the said reason or discrepancy. At best, the testimony of Shanti Devi (PW-1) would show that the place of arrest of the appellant Shashi is debateable. This irregularity and lapse relates to the investigation and would not in any manner reflect on the eye witness version given by PW-1. The aforesaid statement made by PW-1 shows that she did not kneel or bend because of police pressure and wanted to reveal and state the truthful and correct

version, even if her statement would contradict the charge sheet or the police version.

11. The contention of the appellant that Joginder (PW-5), the proprietor of the Kharbanda Fruit juice shop at Multani Dhanda, Nabi Karim, has not supported the prosecution version is incorrect. The offence in question had taken place in front of his shop on 21st November, 2008. He had closed the shop at noon and was not present at the time of the occurrence. He has stated that he returned to his shop at about 4.15-4.30 P.M. and then came to know about the murder of a woman in front of his shop. Investigation was going on and the police had collected earth control samples from the place in question. He was not an eye witness as per the charge sheet and his statement under section 161 of the Code of Criminal Procedure, 1973.

12. We do not agree with the contention of the appellant that the testimony of Shanti Devi (PW-1) should be disbelieved because prosecution version is not supported by any other eye witness, who had seen the alleged occurrence. The appellant was not apprehended at the spot itself and had fled. There is no assertion or suggestion that any of the shopkeepers could have identified the appellant or the deceased. Onlookers would have moved away or at best would have had a fleeting look at the incident. Shanti Devi (PW-1), immediately after the occurrence, had taken the deceased to the Lady Hardinge Hospital. Shanti Devi (PW-1) has stated

that she became perplexed and confused at that time. This is reasonable and should be accepted. At that time PW-1 would have focused and primarily concentrated on taking her daughter Kavita to a hospital for first aid or medical attention. We do not think that the testimony of Shanti Devi (PW-1) should be disbelieved on account of the fact that police during the investigation could not find or locate any other eye witness who could have deposed.

13. Shanti Devi (PW-1) in her cross-examination has referred to Manju, bhabhi of the accused and had stated that she was walking with her at that time. The aforesaid statement was made in the cross-examination on 17th April, 2010. The said sentence does create some confusion as to whether a known third person was walking with Shanti Devi (PW-1). Shanti Devi (PW-1) in her examination-in-chief is clear and categorical that at about 3.00 P.M. on 21st November, 2008, she and her daughter Kavita were going through Multani Dhanda, Nabi Karim, when Kavita (deceased) was stabbed by the appellant Shashi with a knife. In the complaint (Ex.PW-1/A) made by Shanti Devi (PW-1), she has not mentioned or referred to or spoken about the presence of Manju, bhabhi of the accused i.e. the appellant. This statement in the cross-examination by PW-1, by itself, we do not think is sufficient to disbelieve and disregard the entire court deposition implicating and stating that the appellant Shashi was the

perpetrator. Trial Court on the said aspect has also noticed the factum that Shanti Devi (PW-1) in her statement recorded under Section 161 of the Code of Criminal Procedure, 1973, had not mentioned or referred to the presence of Manju, bhabhi of the accused. Trial Court referring to the aforesaid answer given by Shanti Devi (PW-1) in her cross-examination, recorded and noted that if the defence was of the view that Manju was a witness to the incident, the appellant could have summoned Manju during his defence evidence. If the name of Manju did not figure during the course of investigation, it was not necessary for the investigating officer to examine her.

14. The question in the cross-examination itself suggests and affirms that Shanti Devi (PW-1) was present at the place and time of incidence. She had seen the occurrence. Whether a third person had also seen the occurrence would not be a ground to discard the eye witness account given by Shanti Devi (PW-1).

15. The Supreme Court in *Vadiyelu Thevar vs. The State of Madras*, AIR 1957 SC 614 has held:-

“13. It is not necessary specifically to notice the other decisions of the different High Courts in India in which the court insisted on corroboration of the testimony of a single witness, not as a proposition of law, but in view of the circumstances of those cases. On a consideration of the relevant authorities and the provisions of the Indian Evidence Act, the following propositions may be safely stated as firmly established:

(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

(2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.

14. In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act has categorically laid it down that "no particular number of witnesses shall in any case be required for the proof of any fact." The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's 'Law of Evidence' - 9th Edition, at pp. 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in s. 134 quoted above. The section enshrines the well recognized maxim that "Evidence has to be weighed and not counted". Our Legislature had given statutory recognition to the fact that administration of justice

may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime had been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact.”

16. The CFSL report marked Ex.PW-17/F and G refers to the blood stained clothes of the deceased and that human blood of ‘group A’ was found on the said clothes and ‘no reaction’ i.e. no particular blood group was found on the blood stained materials lifted from the spot but human blood was found on them. The CFSL report marked Ex. PW17/F and G therefore do corroborate the testimony of Shanti Devi (PW-1) regarding the place of incident. Joginder (PW-5) has also supported PW-1’s testimony and version on the said aspect.

17. In view of the aforesaid position, we do not find any merit in the present appeal and the same is dismissed. The order of sentence is also maintained.

(SANJIV KHANNA)
JUDGE

(R.K.GAUBA)
JUDGE

JULY 2nd, 2015
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