

\$~R-21 (Part-A)

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

+ **CRL.A. 737/2015**

Reserved on: 29th July, 2015

% **Date of Decision:** 17th August, 2015

RAM ASHISH Appellant

Through: Mr. M. L. Yadav, Advocate

versus

THE STATE Respondent

Through: Ms. Ashaa Tiwari, APP with Inspector
Rajesh Brar, ATO P.S. Kapashera

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.K.GAUBA

SANJIV KHANNA, J:

The impugned judgment dated 22.05.2013 convicts Ram Ashish Yadav, (the appellant), for murder of Renu Devi at about 04:45AM on 25.08.2006 just outside the door of the room where she and her husband Surender used to reside. By order on sentence dated 31.05.2013, the appellant has been sentenced to life imprisonment, fine of Rs.25,000/-, and in default to undergo simple imprisonment for a period of six months. Benefit of Section 428 Code of Criminal Procedure, 1973 (Cr.P.C) would be given.

2. The prosecution version is solely predicated on the testimony of

Surender (PW1) who as noticed is the husband of the deceased Renu Devi and the first informant. Surender (PW2) identified Ram Ashish Yadav as son of his uncle who used to also reside in a room which was in front of their room on the first floor in the property located in Gali No.2, Kapashera. PW2 has deposed that at about 04:45AM on 25.08.2006, he had got up and had gone to fetch water from a tap installed within the property on the first floor but at some distance from their room, when he heard his wife Renu scream and cry. He ran towards his room and found his wife had been stabbed and was bleeding. Renu had then informed that Ram Ashish had caused the said injuries on her stomach with a knife. Appellant Ram Ashish was seen coming out of his room and run away with a knife in his hand. PW2 had tried to unsuccessfully chase him. The appellant threw the knife at distance of 20 metre outside the property. PW2 had then made a call to the police station and his statement (Ex.PW2/A) was recorded. The police had put Renu Devi in the vehicle brought by them for taking her to the hospital, but on the way she expired. PW2 was cross-examined by the Additional Public Prosecutor as the said witness was unable to admit or deny whether the knife marked Ex.P-1 was the one used by the appellant for commission of the offence.

3. PW2 has thus affirmed that appellant Ram Ashish committed murder of his wife Renu Devi as he had seen him running away with a knife in his hand and the deceased Renu had disclosed his name as the perpetrator. The perspicacious question which arises for consideration is whether the version and assertions made by Surender (PW2) should be accepted?

4. Learned counsel for the appellant has submitted that there is discrepancy and variation in the sequence of events given by Surender (PW2) in his court

testimony and the version recorded in Ex.PW2/A. PW2 had alleged that there was land dispute between the father of appellant and father of PW2 and, therefore, the appellant was inimical towards PW2 and wife, whereas it was probable that the appellant and deceased Renu used to like each other and, therefore, PW2 may have committed murder of his wife Renu Devi. Our attention was drawn to suggestion given to PW2 in his cross-examination. PW2 in his examination-in-chief has accepted that they had three children who also used to reside in the same room, but they were not examined. Neighbours have also not been examined. Abscondence, it is submitted, cannot be construed as an incriminating circumstance.

5. We accept that there is a slight variation in the sequence of events as deposed by Surender (PW2) in the court and what is mentioned and recorded in Ex.PW2/A. In Ex.PW2/A it is recorded that Surender (PW2) had gone to fetch water at the tap located at some distance and at that time Surender (PW2) had heard Renu Devi scream. He had rushed towards his room and had seen Ram Ashish Yadav running with a knife in his hand.

6. However, the said difference or divergence in the court deposition of Surender (PW2) and Ex. PW2/A is marginal and does not affect the core assertions of Surender (PW2). In the court deposition as well as Ex. PW2/A, it is recorded that Renu Devi had told Surender (PW2) that the appellant Ram Ashish had caused the injury in her stomach with a knife. PW2 had asserted that he had got up at 4.45 PM to fetch water from the tap installed outside the room. The aforesaid version as to the location of the tap is corroborated in the unscaled and scaled site plan marked Ex.PW13/A and Ex.PW5/A which were proved by Inspector Ramesh Chand (PW13) and Constable Hardeep (PW5).

However, there are aspects and gaps in the prosecution version which are discernable on judicious and earnest examination of Surender's (PW2) testimony and other evidence. We begin with the testimony of the investigating officer Inspector Ramesh Chander (PW13).

7. Insp. Ramesh Chander (PW13), has testified that on 25th August, 2006, he was posted as SHO, PS Kapashera and at about 6.30 AM, DD entry 6A (Ex. PW1/B) was recorded, and thereafter he had reached Deepan Hospital along with Head Const. Samunder (PW9) and driver Gajraj. Surender (PW2) was present in the hospital. The body of the deceased with blood stains was lying on a stretcher. Subsequently, he along with Surender (PW2) and Ct. Bijender (PW11) and Driver Gajraj had proceeded to the property where the occurrence had taken place and had seen blood at two points, one inside the room next to the door and another just outside the room door. He had recorded statement of Surender (PW2) marked Ex. PW2/A and made an endorsement for recording the FIR. Earth control and other evidence were lifted from the spot. They had searched for the appellant Ram Ashish who was missing. They had visited the appellant's place of work at Udyog Vihar, Gurgaon but he could not be found. Search continued. On 6th November, 2006, Satish Yadav landlord of the property, who was also aware of the facts, had produced and presented Ram Ashish before him. Ram Ashish was arrested vide arrest memo (Ex. PW13/J).

8. Satish Yadav landlord of the premises did not appear and depose in the court because he had died. However, his death certificate is not on record. As per the prosecution version, he was to only testify regarding arrest of appellant Ram Ashish and not on any other aspect.

9. Inspector Ramesh Chander (PW13) and Surrender (PW2) have deposed as to recovery of a knife (Ex.P-1) pursuant to disclosure statement of the appellant (Ex. PW13/L). The occurrence had taken place on 25th August, 2006 and the appellant was arrested on 6th November, 2006. Surrender (PW2) in his deposition has stated that on the day of occurrence he had seen the appellant throwing the knife at a distance of 20 meters outside the building where they used to reside. No doubt PW2 has testified that the appellant had got the knife recovered during the investigation but he did not identify the knife when the sealed parcel A-1 received from *Malkhana* was opened. Even on cross-examination by the public prosecutor, PW2 did not deny or accept that the knife (Ex. P-1) was used in the commission of the offence. The knife (ExP-1) as is apparent from the sketch (Ex. PW13/A) is a paper cutter with a stainless steel blade which could be moved in and out of the plastic handle. PW2's categorical assertion that he had seen a knife being thrown at a distance of 20 meters outside the building, means and implies that the police were aware of the area/ location where the knife was thrown.

10. Surrender (PW2) in his court deposition has stated that their three children also used to reside in the same room. Inspector Ramesh Chander (PW13) did not record their statement and there is nothing on record to suggest even in the police case diary that the police officers had spoken and ascertained or verified facts from them. The occurrence in question as per Surrender (PW2) was at 4.45 AM in the morning, when he had gone to fetch water from a tap. It appears that water supply was scanty and was available early in the morning. Surrender (PW2) has not deposed and referred to presence of any of the neighbours at the tap or who had got up. It would be

reasonable to hold that others residing in the same building would have got up to fetch water. Surender (PW2) has stated that Renu Devi had cried and screamed. This should have woken up the neighbours. They would have opened their doors, even if they had not got up by then to fetch water. Neighbours, necessarily had the chance and opportunity to see what had transpired.

11. SI Sunder Pal (PW6) deposed that he was in-charge of crime team who had inspected the spot/place of crime on 25th August, 2006 on the first floor. Blood stains could be seen on the floor near the door outside as well as inside the room. He had accordingly submitted his report Ex. PW6/A. He had specifically advised the Investigating Officer to record statements of neighbours and relations of the deceased keeping in view the facts noticed by him. He had visited and remained on the spot between 7.30 to 8.00 AM on 25th August, 2006. However, PW6 in his cross-examination accepted that he could not state the distance of blood stains found inside and outside the room. Const. Bajender (PW11) has stated that on 25th August, 2006, they had visited Deepan Hospital, Kapashera and Surender (PW2) husband of the deceased was present there. In his cross-examination, PW11 has deposed that DD entry 6A was recorded at 6.30 AM and at 6.35 AM they had left for the spot i.e. the hospital. He has also accepted that during his presence inquiry was made only from Surender (PW2), though other tenants were present in their rooms. They are completely quiet and silent on examination of the children and neighbours.

12. Insp. A.K. Singh (PW14) has testified that DD entry No. 6A was entrusted to him for action and he along with Const. Bijender (PW11) had

thereafter proceeded to Deepan Hospital, Kapashera and where they had seen the dead body of Renu Devi who had a stab wound on her stomach. In the meanwhile, Insp. Ramesh Chander (PW13) had also reached the spot. Thereafter, they along with Surender (PW2) and other persons proceeded to the place of occurrence i.e. the room in question which was inspected. Blood was lying at two places near the room. PW2 was thoroughly examined and his statement (Ex. PW2/A) was recorded. Crime team was also called.

13. In spite of the noting and the suggestion given in the crime team report marked Ex.PW6/A, that the neighbours should be examined, there is nothing to suggest that statement (Ex.PW2/A) made by Surender (PW2) was counter checked and verified. We do not have on record any evidence as to the age of the three children, who as per the prosecution version were present in the room and in all probability would have seen the occurrence. The police case dairy is also silent on these aspects.

14. Another aspect of concern is that Surender (PW2) claims that the police had lifted his wife in a vehicle and they had taken her to hospital. The police officers who had picked up and taken Renu Devi along with Surender (PW2) to the hospital have not been cited as witness and have not deposed. As per the prosecution case, the deceased Renu Devi, was taken to the hospital in a private vehicle and not in a police vehicle.

15. Surender (PW2), has deposed that he had made a call at number 100, but the prosecution has not placed on record any entry or recording at the Police Control Room to show that any such call was made and the deceased was taken to the hospital in a police van. We have examined the depositions of Insp. Ramesh Chander (PW13), Insp. A.K. Singh (PW14), Const. Bajender (PW11) and HC Samunder (PW9), which would show that first information

regarding the occurrence was received in the police station only at 6.30 AM, when DD entry 6A (Ex. PW1/B) was recorded. DD entry number 6A refers to information communicated by the Police Control Room that at Deepan Hospital and Nursing Home, one person had come in a vehicle, in which dead body of a lady was lying. It is only thereafter the police had swung into action. There is, therefore, gap of one and an hour, when as per Surrender (PW2), the deceased Renu Devi was stabbed and when she was brought to the hospital. PW2 had not explained the reason for the said time gap and delay. Police has also not ascertained the cause or reason for the said delay.

16. The aforesaid discrepancies and lapse individually may not appear to be significant and meaningful, but when taken and appreciated collectively, leave and create doubt and uncertainty as we are unable to fathom reason and cause for not ascertaining and verifying facts from the children and neighbours for the appellant claims that Surrender's version should not be accepted, for he could have been the perpetrator. We would like to elaborate and state our reasons for in the present case the said lapse and failure has dented and unsettled the prosecution case.

17. The unscaled site plan (Ex. PW13/A) indicates that blood was found spread on the floor adjacent to the door of the room in occupation of Surrender (PW2) and deceased Renu Devi. Blood was indicated just outside and inside the room door. The scaled site plan prepared by Const. Hardeep Singh (PW5) marked Ex. PW5/A is similar and in fact indicates that there were eight rooms on the first floor including the room in occupation of the deceased and PW2. As per the deposition of Surrender (PW2) he had rushed towards his room and seen his wife in pool of blood. It is certain that deceased had either come out

of the room, before or after she was stabbed. Children of the deceased who were sleeping in the room would have certainly noticed the occurrence and seen or noticed the perpetrator and interacted with their mother. They certainly knew Surender (PW2), their father, and also the appellant Ram Ashish, who is closely related, being father's brother's son and who was residing in the room opposite to the room in occupation of the deceased Renu Devi and Surrender (PW2) for last about 2 months. Similarly, the neighbours, could have etched and narrated on the relevant and material facts.

18. Ram Ashish in his statement recorded under Section 313 Cr.P.C., has accepted that he was residing in a room opposite the room of Surender (PW2) and the deceased Renu Devi. He, however, denied the other suggestions given to him based upon the testimony of Surender (PW2) regarding the murder. He has also accepted that he was produced before the Metropolitan Magistrate on 7th November, 2006. In response to another question, the appellant has stated that the witnesses being interested witnesses have deposed against him and on the date of arrest, he was present at the residence of the landlord and had been falsely implicated. Surender (PW2) in his cross-examination was specifically given the suggestion that the appellant Ram Ashish was involved with the deceased and for that reason PW2 had murdered his wife. PW2 had denied the suggestion. Learned counsel for the appellant on the said aspect has also drawn our attention to the disclosure statement of the appellant marked Ex. PW13/L which elaborates on the close relationship between the appellant Ram Ashish and deceased Renu Devi including the factum that PW2 was earlier working in Gujarat. The argument raised before us is that Surender (PW2) was the perpetrator and therefore the

neighbours and the children were not examined for they would have been the best and most reliable witnesses who would have thrown light on the controversy and helped the court to ascertain whether or not the suggestion given to Surender (PW2) was correct.

19. There are earlier authorities, which support the view that Section 25 of the Evidence Act prohibits use of a confession against the maker, i.e., in support of the prosecution case, but does not prohibit use in favour of an accused (see *Hasil versus R*, AIR 1942 Lahore 37, *Lakhan versus R*, AIR 1948 Lahore 43, *In Re.. Moti Tewar*, AIR 1952 Madras 586 and *Hari Shankar versus State*, 1985 Criminal Law Journal 1700 (Del.)). In the present case the suggestion finds a degree of facsimile and support from the version given by the appellant at the time of his interrogation. The disclosure statement certainly reveals that the appellant Ram Ashish had given his version and also indicated the motive which would well be the motive and reason for the offence by a third person who was present and the primary and sole witness i.e. Surender (PW2). Thus, the suggestion given to Surender (PW-2) was not an afterthought, but a plea which was taken at the initial stage itself immediately after Ram Ashish was detained/ arrested. Given the circumstances, Investigating Officer should have investigated and probed this angle to rule out and dispel the possibility that the appellant Ram Ashish was wrongly implicated by Surender (PW2) to save himself. The said possibility has not been ruled out and negated. Circumstantial and supporting evidence noticed above, does not help us resolve this contention, in favour of the prosecution. Rather the confusion and debate gets confounded. Therefore, it would not be safe and appropriate to convict the appellant Ram Ashish solely

on the basis of the testimony of Surender (PW2) and we must look and seek sufficient corroboration, before we can rely and transcribe to PW's version of the events. Thus, the present case cannot be equated with cases where multiple witnesses of the same hue have not been examined for this is not required and necessary, but this is a case where the ocular version of the singular witness is not beyond doubt and other crevices in the prosecution version have not been comprehensively and irrefutably cleared and unclouded.

20. Surender (PW2) in his testimony has given the reason and cause or motive for the occurrence, as a land dispute between father of the appellant and father of PW2. We do appreciate and recognize that it is difficult to prove "motive" which refers to some ulterior reason or ground to commit an offence but in the present case to support and corroborate PW2 version, record/papers of any land dispute as alleged could have been brought on record. The motive as suggested does appear to be rather weak and unconvincing for the appellant Ram Ashish to stab Renu Devi. Possibly retaliation and act with vengeance would have been directed towards others.

21. We would now examine issue of abscondence. It does appear Ram Ashish had absconded after the occurrence. Abscondence normally is not treated as an incriminating fact nor a clinching circumstance, for a person may abscond on account of fear of false implication and arrest. It is certain that the appellant Ram Ashish was residing in the room on the opposite side of the room in occupation of Surender (PW2) and the deceased Renu Devi. Abscondence in the present case could also be attributed to the reason that the appellant had seen and heard Renu Devi scream on being stabbed and given

the nature of relationship he claims he had with Renu Devi, the appellant felt that he should run away and abscond. In the facts of the present case, it would not be appropriate and correct to treat abscondence as an incriminating fact for the abscondence can be explained for several reasons.

22. In view of the gaps and the fractured nature of the evidence adduced, doubts persist and we cannot and we should not uphold the conviction of the appellant solely on the testimony of Surender (PW2). There are various loose ends and perforations which do not get explained and remain unanswered. The distance between “may have” and proof beyond reasonable doubt has not been bridged and traversed.

23. In view of the aforesaid discussion, we give benefit of doubt to the appellant-Ram Ashish and set aside his conviction. He will be released forthwith unless he is required to be detained in accordance with law in any other case.

(SANJIV KHANNA)
JUDGE

(R.K. GAUBA)
JUDGE

AUGUST 17th, 2015
ss/kkb