

THE HIGH COURT OF DELHI AT NEW DELHI

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Order pronounced on: 28.07.2010
Judgment with reasons on : 30.07.2010

+ **Crl.A. 225/2010**

NAVEEN CHAUHAN @ CHUSSI

.....Appellant

- versus -

STATE

.....Respondent

Advocates who appeared in this case:

For the Appellant : Mr D.B. Goswami
For the Respondent : Mr Richa Kapoor, APP
Insp. Satvir Singh, PS Dabri

Crl.A. 291/2010

RAM NANDAN

.....Appellant

- versus -

STATE

.....Respondent

Advocates who appeared in this case:

For the Appellant : Mr K.K. Manan with Mr. Nipun Bhardwaj & Mr. Mustafa Arif
For the Respondent : Ms. Richa Kapoor, APP
Insp. Satvir Singh, PS Dabri

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V.K. JAIN

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| 1. Whether Reporters of local papers may be allowed to see the judgment ? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

V.K. JAIN, J.

1. The appellants were acquitted by us vide a separate order dated 28.7.2010. While acquitting them, we stated that the reasons for our decision would follow. We, accordingly,

are recording reasons for their acquittal.

2. These appeals are directed against the judgment dated 19.1.2010, and Order on Sentence dated 27.1.2010, whereby the appellants were convicted under Section 302 IPC read with Section 34 thereof and were sentenced to undergo imprisonment for life and to pay fine of Rs 2,000/- each or to undergo SI for six months each in default.

3. On 30th April, 2006, at about 3.55 pm., Bhola Chaudhary, brother of deceased Anita, informed Police Control Room that someone had cut the throat of his sister (wrongly recorded as aunt) in House No.304, Gali No.1, Durga Park, Nasir Pur. On receipt of this information, SI Ved Prakash of PS Dabri went to the spot and found the dead body of the deceased Anita lying in the flat. He recorded the statement of Bhola Chaudhary, who was present on the spot, and the FIR was registered on his statement. Bhola Chaudhary stated that the appellant Ram Nandan, husband of the deceased, had developed illicit relations with a girl, which had become a cause of quarrel between him and the deceased. He further stated that on that day, his son Vivek had found the dead body of Anita lying in her flat and had informed him. He alleged that the appellant Naveen Chauhan @ Chussi also used to come to their house after taking liquor and used to

bring vegetables etc. on the pretext that the husband of the deceased had sent him. They, however, used to rebuke him and send him back. He expressed suspicion that the appellants Ram Nandan and Chussi were involved in the murder of his sister. The case of the prosecution is that murder of deceased Anita was committed by the appellants.

4. There is no eye-witness of the murder of deceased Anita. The trial court based their conviction on the following circumstances:

“(i) brother of the deceased and mother of the deceased have clearly stated that there were quarrel between accused Ram Nandan and his wife Anita, the deceased, over accused Ram Nandan having illicit relations with another women. This point towards the possible motive which could have triggered the murder in this case.

(ii) Accused Naveen as the close friend of the accused Ram Nandan used to frequently visit the house of the deceased as well as the house of her parents.

(iii) on the date of occurrence, at the time of occurrence, the presence of accused persons at the spot is hinted by deposition of PW-13 as he has deposed that in the midst of the party, which was being held at his house, both the accused persons were coming and going. Accused Ram Nandan had a motorcycle. The place of occurrence, admittedly, was not far off from the place where the alleged party was going on.

(iv) At the instance of accused

Naveen, weapon of offence, which was the knife and was stained with human blood was recovered.

(v) The doctor, who had conducted postmortem on the body of the deceased was shown the knife recovered at the instance of accused Naveen. The said doctor had prepared its sketch also and opined that this weapon of offence could have been used to inflict injury to the deceased Anita. That the injuries inflicted were sufficient to cause death of the deceased.

(vi) At the instance of accused Naveen, his blood stained clothes were recovered in pursuance to his disclosure statement.

(vii) At the instance of accused Ram Nandan, his bloodstained clothes were recovered from polythene, which he allegedly abandoned near the nala.

(viii) The Forensic report ex. PW-23/D indicates that the weapon of offence, the shirt and Jeans pant, the shirt of the accused persons, ladies shirt, salwar, brazier of the deceased, all have had human blood of B-Group. Meaning thereby, that the same human of blood of B-Group, which was detected on the clothes of the deceased was found on the weapon of offence and the clothes, which were recovered at the instance of the accused persons. This is a very strong incriminating and corroborating evidence available on record, as against both the accused persons, to confirm their involvement in the present crime of murder.

(iv) The recovery, which was effected from both the accused persons, in this case, were at their instance, in pursuance

of their disclosure statement and is admissible under Section 27 of the Indian Evidence Act.

(x) The conduct of the accused Ram Nandan after having known and seen that his own wife has been murdered was abnormal. He was neither shocked nor he resorted to lodge any complain against the offence even though he had enough opportunity as he was arrested on 01.05.2006 only.”

Circumstance No.1

5. According to PW-8 Mankeshwari Devi, mother of the deceased, the appellant Ram Nandan had fallen in love with a Punjabi girl and a quarrel had taken place between the deceased and her husband. She, along with the deceased, went to the house of that girl and told her that she was destroying the family life of her daughter. That girl, however, did not listen to them and rather threatened to call the police. The witness was confronted with her statement recorded under Section 161 of Cr.P.C., where she had not stated that she had gone to the house of that girl, had told her that she was destroying the life of her daughter and that girl did not listen to them and rather threatened to call the police. This part of her deposition, therefore, is an improvement. The case of the prosecution is that the girl with whom the appellant Ram Nandan had an affair was PW-6 Meena Sharma. However, when she came in the witness box, Meena Sharma

did not support the prosecution and denied having told the police that her marriage had earlier been settled with the appellant Ram Nandan and that the appellant used to come near her house to meet her. She also denied having told the police that appellant Ram Nandan used to insist that she marry him and that a dispute had arisen between her and her husband, which had resulted in breakdown of her marriage. Thus, the prosecution has failed to establish any extra marital affair of the appellant Ram Nandan. The evidence produced by the prosecution proves nothing more than that the deceased used to suspect that her husband was having an affair with a girl which, of course, might have resulted in some quarrel between the husband and wife. However, the deposition of the mother of the deceased does not indicate when the alleged quarrel took place between the husband and wife. In fact, according to PW-9 Shivam Chaudhary, father of the deceased, it was one year prior to this incident that the appellant had illicit relationship with a girl. As far as PW-3, complainant Bhola Chaudhary is concerned, his testimony regarding the alleged illicit relations of the appellant Ram Nandan with a girl is hearsay being based upon what his mother had told him. There is, in any case, no evidence that the alleged illicit relationship of the appellant with a girl

continued till the time the deceased was murdered on 30th April, 2006.

Circumstance No.2

6. The alleged visits of the appellant Naveen @ Chussi to the house of appellant Ram Nandan cannot be said to be an incriminating circumstance. There is no evidence of the appellant Naveen @ Chussi having visited the house of the deceased on the day she was murdered.

Circumstance No.3

7. According to PW-13 Mahesh Prasad, in the morning of 30th April, 2006, there was a party in his house on the occasion of the marriage of daughter of Shri Lalu Prasad Yadav and many MLAs had come from Bihar to attend the marriage. He further stated that the appellants were invited by him on that day to work as waiters. He also stated that before receipt of a telephone call at about 4.00 pm, sometimes appellant Ram Nandan alone and sometimes both the appellants used to go outside from the party, though he did not know much since he was busy in the arrangement of the party. This witness was unable to give the name of the daughter of Shri Lalu Prasad Yadav, who was to be married. He claimed to be a mason. Though he claimed that many MLAs had come from Bihar to attend the marriage, he could

give the name of only one MLC Mr.Bhim Singh, who, according to him, had come to attend the marriage. Mr.Bhim Singh has, however, not been produced as a witness. No invitation card of the party alleged to have been given by this witness on the occasion of the marriage of daughter of Shri Lalu Prasad Yadav, has been produced. Taking the deposition of the witness in this regard to be true, it proves nothing more than that the appellant had, during the course of the party, sometimes gone out of the party venue. He does not say that the appellants had left the party for say one or two hours at a stretch. The case of the prosecution is that the appellant Ram Nandan had a motorcycle with him and the place of murder is not far of from the place where the party was organized by PW-13 Mahesh Prasad. According to Mahesh Prasad, the party was organised by him at the roof of his house which is RZ-125, Gali No11, Kailash Puri Extension, New Delhi. We do not know what was the distance between the place where the party is alleged to have been organized by PW-13 and the place where the deceased was murdered. According to PW-13, they reached the place of occurrence within half an hour after receiving information about the murder of the deceased. As noted earlier, the appellant Ram Nandan had a motorcycle with him on that day. If it took half an hour to reach the place

of occurrence from the place of PW-13, the appellants required one hour just to go to the place of occurrence from the place where the party was organized by PW-13 on that day and to return to the venue of the party. The case of the prosecution is that an attempt to have sexual intercourse with the deceased was made before she was murdered. It is also the case of the prosecution that after committing murder the appellant Naveen Chauhan @ Chussi had concealed his bloodstained clothes as well as the weapon of offence in a cardboard box in his house, whereas the appellant Ram Nandan had thrown his bloodstained clothes near a drain in Dashrath Puri. It would take substantial time to go to the place of crime from the house of PW-13, to make an attempt to have sexual intercourse with the deceased, commit her murder, change the clothes which the appellants were wearing at the time of committing murder and conceal the bloodstained clothes and bloodstained weapon of offence at two different places and then to go back to the venue of the party. There is no evidence that the appellants had left the venue of the party for so much duration that they could have done all this within that much time. Therefore, in our view, in the facts and circumstances of this case, the alleged intermittent disappearance of the appellants from the venue of the party alleged to have been

organized by PW-13 Mahesh Prasad, cannot be said to be an incriminating circumstance against them.

Circumstance Nos.4,6,7 & 9

8. As noted earlier, while lodging FIR, PW-3 Bholu Chaudhary alleged that he had very strong suspicion (*Mujhe Poora Poora Shak Hai*) that the appellant Ram Nandan and Naveen Chauhan @ Chussi were involved in the murder of his sister. According to PW-26 Insp.Dharamvir Singh, he had interrogated the appellants on reaching the spot on 30th April, 2006. The case of the prosecution is that no disclosure statement was made by either of the appellants when they were interrogated on 30th April, 2006. According to PW-13, who cannot be said to be favourably inclined towards the appellants, he having supported the prosecution, on 1st May, 2006, at about 9.00 am, the appellants came to his residence of their own and when he enquired from the appellant Ram Nandan as to how it had happened, he stated that he did not know anything and in fact started weeping. It is difficult for us to accept that the appellants who did not make any disclosure statement on 30th April, 2006 despite they being the prime suspects and having been interrogated on that day and despite their having claimed innocence to PW-13 in the morning of 1st May,2006, would make a disclosure statement

on 1st May, 2006 claiming concealment of weapon of offence/their bloodstained clothes, at the places by them. If they were to make such a disclosure statement, they would have done it on 30th April, 2006 itself and there would have been no reason for them to claim innocence, firstly, on 30th April, 2006 at the time of interrogation by the police and then to PW-13 Mahesh Prasad in the morning of 1st May, 2006.

9. As regards the alleged recovery of weapon of offence and bloodstained clothes, considering the fact that both the appellants were prime suspects, they having been named in the FIR lodged on 30th April, 2006 and they having been interrogated on that very day, there could have been no reason for the police not to search the house of the appellant Naveen Chauhan @ Chussi on 30th April, 2006 itself. This is the minimum which any police officer would do in order to collect any incriminating evidence which he might get against the prime suspects in the case. Therefore, we find it very difficult to accept the alleged recovery of weapon of offence and bloodstained clothes from the house of the appellant Naveen Chauhan @ Chussi on 1st May, 2006.

10. The case of the prosecution is that the bloodstained clothes of the Ram Nandan were kept in a polythene bag which was lying at a place near a drain. It has come in the

evidence that water was flowing in the drain at that time. We find it difficult to accept that the appellant Ram Nandan despite having an opportunity to either wash the bloodstained clothes or to just throw them in the water flowing in the drain would have kept them near the drain in a polythene bag. This is not the way the human mind functions. In case the appellant Ram Nandan was involved in the murder of his wife and bloodstains of the deceased had come on his clothes at the time of committing her murder and, therefore, he intended to get rid of those bloodstained clothes so as to destroy the evidence against them in the form of bloodstained clothes, he, instead of keeping the clothes in a polythene bag would have just thrown them in the flowing water, even if he did not want to waste time in washing those clothes. He knew that if the clothes were found at a later date, he was bound to be in difficulty with the police. Hence, instead of preserving the clothes, he would have utilized the opportunity, which he would have, if he went up to the drain, by throwing them in the flowing water or by washing them in the drain.

11. The case of the prosecution is that the weapon of offence and clothes of the appellant Naveen Chauhan @ Chussi which were stained with the blood of the deceased were found concealed by him in a box of garbage. If the appellant

Naveen @ Chussi had gone to his house for the purpose of changing his clothes, he would have washed or destroyed those clothes instead of preserving them and that too in his own house. It is difficult for us to accept that an accused who had adequate opportunity to change the clothes worn by him at the time of commission of the murder and also had opportunity to wash or destroy them would prefer the course of preserving the evidence against him and that too in his own house from where it could easily be recovered by the police. It is difficult to believe that he would not have washed or destroyed/discarded the bloodstained weapon and clothes either on 30th April, before returning to the party of PW-13 or after he was interrogated by the police in the evening of that day. He had the whole night of 30th April as well as a lot of time available to him on 1st May, if he wanted to remove the evidence alleged to have been kept by him in his house.

12. PW-13 Mahesh Prasad, who claims that the appellant had intermittently left the venue of the party organized by him on 30th April, 2006, does not say that the clothes of the appellants were found changed when they returned to the venue of the party after remaining absent from there for a while. Had the clothes of the appellants been found changed during the course of the party, that could not have escaped

the attention of the PW-13 Mahesh Prasad who claims to have noticed their intermittent absence from the party. This is yet another circumstances which belies the alleged recovery of bloodstained clothes on 1st May, 2006.

Circumstance Nos.5 & 8

13. Since we have disbelieved the alleged recovery of knife and bloodstained clothes from the appellants, these circumstances cannot be said to be incriminating to the appellants.

Circumstance No.10

14. We fail to appreciate how the learned Trial Judge concluded that the behaviour of the appellant Ram Nandan after the murder of his wife was abnormal. According to the learned Trial Judge his behaviour was abnormal since neither he was shocked nor he lodged any complaint even though he had enough opportunity to do so. It has come in the deposition of none other than the brother of the deceased that when the appellant Ram Nandan came to the spot on receiving information about the murder of his wife, he started weeping and 'pretended' to become unconscious. According to PW-13 Mahesh Prashad also when they reached the spot, the appellant Ram Nandan started weeping loudly. As noted earlier, when the appellants met him again in the morning of

1st May, 2006, the appellant Ram Nandan again expressed ignorance about the murder of his wife and started weeping. Hence, there was no justification for the learned Trial Judge to say that the appellant Ram Nandan was not shocked on hearing about the murder of his wife. The case of the prosecutin is that PW-3 Bhola Chaudhary had already informed the Police Control Room at about 3.35 pm about the murder of his sister and the police had already reached the spot at 4.03 pm, as recorded in the PCR record Ex.4/A, whereas the appellant was informed about the death of his wife only at about 4.00 pm. There was no occasion or reason for the appellant Ram Narain to report the murder of his wife to the police. The FIR having already been lodged and the appellant Ram Nandan himself being a suspect having been interrogated by the police on that very day, there could be no question of his lodging another FIR in respect of the very same incident. Therefore, we find nothing abnormal in the conduct of the appellant Ram Nandan after he came to know about the murder of his wife.

15. We would like, at this stage, to deal with the contention of the learned counsel for the respondent that when the complainant called the appellant Ram Nandan on his mobile to inform him about the murder of his wife, he did

not take the call, which, according to the learned counsel, exhibited guilty mind on his part. We are unable to agree with the learned counsel. We find that according to PW-3 Bhola Chaudhary when he contacted the appellant Ram Nandan on his mobile he did not attend the phone. He (the witness) thereupon made telephone call at the telephone installed at the shop of appellant Ram Nandan. On the other hand, according to PW-8 Mankeshwari Devi, mother of the deceased, she made telephone call to the appellant Ram Nand, who did not attend the call and she thereafter called the colleague of Ram Nandan who used to have lunch at the house and that colleague attended the call and told her that he was called by the appellant Ram Nandan to attend a party. PW-13 Mahesh Prasad has given an altogether a different version in this regard. According to him, when the appellant Ram Nandan received telephone call from his brother-in-law on his mobile, he gave the mobile to him to hear and then the brother-in-law of Ram Nandan informed him that his wife had been murdered. Thus, PW-13 Mahesh Prasad contradicts the depositions of PW-3 and PW-8. We cannot infer any guilty mind in the appellant Ram Nandan handing over the mobile to PW-13 Mahesh Prasad instead of taking the call himself. Nothing really turns on it since it is the case of the

prosecution that the appellant along with PW-13 Mahesh Prasad rushed to the spot immediately on receipt of information of the murder.

16. It is a settled proposition of law that in a case based purely on circumstantial evidence the prosecution needs to establish all the circumstances cogently and firmly to the full satisfaction of the court, before they can be acted upon. The circumstances proved by the prosecution ought to be wholly incompatible with the innocence of the accused and must necessarily and unerringly point towards him as perpetrator of the crime. The courts need to be satisfied that in all probability it was the accused and no one else who had committed the crime for which he was charged.

17. In the present case, the prosecution has failed to establish the disclosure statement alleged to have been made by the appellants and the alleged recovery of weapon of offence and bloodstained clothes from them. Thus, the main circumstances relied upon by the prosecution against the appellants do not stand established beyond reasonable doubt. The circumstances which the prosecution has been able to prove, viz., quarrel between the appellant Ram Nandan and his wife on account of the wife suspecting an illicit relations between her husband with another woman, and the appellants

having intermittently left the venue of the party alleged to have been organized by PW-13 on 30th April, 2006, are not sufficient to prove the guilt attributed to the appellants. Both of them, therefore, are liable to be acquitted.

18. Both the appeals are allowed.

V.K. JAIN, J

BADAR DURREZ AHMED, J

JULY 30, 2010

RS/bg