

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

Judgment Reserved on: September 22, 2014

% *Judgment Delivered on: September 30, 2014*

+ **CRL.A. 853/2014**

SHAHNAZ

..... Appellant

Represented by: Mr.Sumeet Verma and
Mr.Amit Kala, Advocates.

versus

STATE

..... Respondent

Represented by: Ms.Aashaa Tiwari, APP with
Inspector Mohar Singh PS
K.N.Katju Marg.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Shahnaz is convicted for the offence of murder of Rakesh Gupta and directed to undergo imprisonment for life for the same.
2. Shahnaz assails the impugned judgment of conviction dated November 25, 2013 on the ground that the present is a case of no evidence against her. Rahul Gupta, who deposed as an eye-witness, has been disbelieved by the learned Trial Court and rightly so. There is no direct evidence and even the circumstantial evidence so sought to be proved by the prosecution does not form a complete chain so as to rule out the hypothesis of the innocence of Shahnaz. There is no evidence on record that Rakesh Gupta was last seen with Shahnaz or that she inflicted injuries to him and thereafter dumped the body in the drain from where the dead body was recovered. Moreover, the dead body recovered could not have been identified to be that of Rakesh Gupta as it was in a highly decomposed

condition. Even the teeth which were taken out for the DNA analysis could not give the result. The identification of the dead body being highly doubtful, the conviction of Shahnaz as above is vitiated. The recovery of the wicket for playing cricket has also been planted and does not connect with the offence as no blood was found thereon.

3. In her defence Shahnaz produced Dharampal, DW-1. Shahnaz pleaded false implication and in her explanation under Section 313 Cr.P.C stated:

“I am innocent. I have been falsely implicated in this case. Deceased Rakesh Gupta was my employee and he has gone somewhere after settling his account. I do not know where he had gone.”

4. The learned Trial Court held that the following chain of circumstantial evidence has been proved against Shahnaz and thus convicted her granting the benefit of doubt to the co-accused Shakil @ Bhura and Shahid @ Kalu:

- “i. That accused Shahnaz and victim were residing as husband and wife in H.No.G6/97 Sector 15 Rohini,*
- ii. That the said house was taken on rent by the victim Rakesh Gupta by the name Ajay and accused Shahnaz was residing in the said house as his wife with the name of Anita,*
- iii. From the testimony of PW-1 and PW-6 it is proved that accused Shahnaz has told to them that the victim left the house after quarrelling with her,*
- iv. The complaint ExPW-24/Q given by the accused Shahnaz proved that she was residing at H.No.G6/97 sector 15-Rohini on 18.10.10 when she had given the said complaint on the basis of which DD no. 34A ExPW-20/A was recorded hence she falsely denied in her statement*

U/S 313 Cr.P.C that she was not residing at the flat no.G6/97 sector 15 Rohini.

- v. The admission of accused Shahnaz in complaint ExPW-24/Q that victim left the house on 05.10.2010.*
- vi. The failure of accused to explain where victim has gone from her house on 05.10.2010 and thereafter no body seen him alive though she was the last person who seen victim alive,*
- vii. The false statement of accused U/s 313 Cr.P.C that accused was her employee though he was residing with her as her husband.*
- viii. Failure of victim to report to police about missing of victim till 18.10.2010 though she was living with him as his wife and even thereafter lodging complaint under pressure of victim brother,*
- ix. The testimony of PW-22 proved that she made the confessional statement EXPW-22/F in which she confessed that she had thrown the dead body in the gutter/septic tank of Sulabh Shochalaya Sector-26, Rohini.*
- x. Recovery of dead body at her instance from the aforesaid place in pursuance of disclosure statement of accused Shahnaz EXPW-22/F.*
- xi. The identification of dead body by PW-3 and PW-5 as of victim Rakesh Gupta.*
- xii. The opinion of PW-4 that the time since death is approximately 2 to 3 months prior to postmortem which corroborate with the timing of missing of victim Rakesh.*
- xiii. The cause of death as is as per the opinion of PW4 is*

cranio cerebral injury as a result of blunt force impact over head and fracture of leg bone. Hence death of victim was homicidal.”

5. Rahul Gupta, PW-5, brother of the deceased appeared in the witness box and deposed that his brother had called him as the accused have threatened to kill him and when he went to the house of his brother at Rohini he saw Shahnaz was hitting the deceased on the head and other parts of the body with the cricket wicket, Shakil @ Bhura caught hold of the deceased Rakesh by his legs and Shahid @ Kalu had caught hold of his right hand. He got scared and ran away from there. However, this version of Rahul Gupta is a material improvement in his deposition in Court as he did not claim to be an eye-witness in his statement recorded by the police on January 07, 2011 which was nearly after three months of the incident. The learned Trial Court thus rightly rejected the version of Rahul Gupta.

6. The first three circumstances have been held to be proved by the learned Trial Court on the strength of the testimony of PW-1 Meena Handa and PW-7 Raj Kamal Handa. Meena Handa and Raj Kamal Handa are the owners of Flat No.G-6/97, Ground Floor, Sector-15, Rohini. According to them they had let out the said flat through a property dealer at monthly rent of ₹6,000/- on September 16, 2010. Ajay disclosed the name of his wife as Anita and that they were having two children. Since some balance amount was left Raj Kamal Handa went to take the same from Ajay where he met Anita whose actual name was later revealed as Shahnaz and he came to know that Ajay had left the house after quarrelling with her. On the next day when he went to the house of Anita she assured him to vacate the premises after some days. Raj Kamal Handa stated that he along with his

wife had gone to the boutique at Sector-18 where they came to know that Ajay had left his work. These two witnesses had not seen Shahnaz @ Anita at the time of signing the agreement and the finding of the learned Trial Court that Shahnaz and Rakesh Gupta were living as husband and wife at G-6/97, Sector 15, Rohini is a farfetched inference.

7. Prem Pal, PW-3 the brother-in-law of Rakesh Gupta who lodged the complaint about the missing of Rakesh Gupta deposed that on October 06, 2010 he came to Delhi where he contacted Dharampal a friend of Rakesh Gupta and then he came to know that Rakesh Gupta was residing with a lady named Shahnaz at G-6/97, Sector-15, Rohini. Thus even Prem Pal has not seen the two of them living together and Dharam Pal from whom he got to know this fact has not been cited as a witness.

8. Though Mukesh Kumar PW-12 proved that Rakesh Gupta had got made identification proof with the name of Ajay however, on the basis of the sketchy evidence on record it cannot be held that Shahnaz and Ajay were living together in the same house at Rohini as husband and wife and Ajay left the home after quarrelling with Shahnaz.

9. Mukesh Kumar PW-12 and Prem Pal PW-3 have deposed that when they met Shahnaz she stated that Rakesh Gupta had left the house after quarrelling with her. She further stated that she had broken the legs and hands of Rakesh Gupta and he had been thrown out of the house and will inform if Rakesh Gupta returns to her house. Having heard so, they went to the Police Station and got recorded the statement Ex.PW-3/A. The said statement was recorded belatedly by Prem Pal PW-3 on January 06, 2011 though the incident was of October 05, 2010 and prior thereto a missing report was lodged by Shahnaz on October 18, 2010.

10. The learned Trial Court has used the admission in the complaint by Shahnaz Ex.PW-24/Q. However, a perusal of the complaint which is undated would show that Shahnaz has stated that Rakesh Gupta was working at her house for ₹2000/- and had gone away after taking his salary on October 05, 2010 at 5.00 PM. On October 18, 2010 his brother came and stated that Rakesh Gupta had not reached home. She clarified that Rakesh Gupta was working with her for two months and left after clearing his dues and had not returned back. Shahnaz in the other complaint recorded on the same date i.e. October 18, 2010 clarified that Rakesh Gutpa was doing the work of boutique with her. One fails to understand when there is no evidence on record to prove that Rakesh Gupta and Shahnaz were staying as husband and wife except a farfetched finding from the testimony of Meena Handa and Raj Kamal Handa, how the learned Trial Court came to the conclusion that Shahnaz made a false statement under Section 313 Cr.P.C. stating that Rakesh Gupta was the employee of Shahnaz though he was residing with her as her husband.

11. The second circumstance used against Shahnaz is her making the disclosure statement PW-22/F wherein she confessed that she had thrown the dead body of Rakesh Gupta in gutter/septic tank of Sulabh Shochalaya Sector-26, Rohini and the recovery of the dead body pursuant thereto. The factum of recovery of the dead body from the septic tank of Sulabh Shochalaya, Sector-26, Rohini on January 07, 2011 stands proved by the prosecution however, the material fact which has not been noted by the learned Trial Court is that though the family members of Rakesh Gupta did not find him when they came to meet Shahnaz on October 18, 2010, they lodged no complaint and Prem Pal lodged the complaint vide Ex.PW-3/A on

January 06, 2011 at 6.30 AM and on the next day the dead body has been recovered. It is strange that despite Rakesh Gupta missing since October 05, 2010, no complaint was lodged and a day before the body was recovered, complaint was lodged on January 06, 2011.

12. It is the case of the prosecution that the dead body had been putrefied to a great extent and thus the identification of the dead body at the instance of Prem Pal and Rahul Gupta cannot be relied upon. Further two teeth of the dead body were extracted for DNA analysis however, the report Ex.PW-24/PX states that DNA could not be isolated from the two teeth of the dead body. Thus in our opinion there is no proper identification of the dead body to be that of Rakesh Gupta.

13. As per the post mortem report Ex.PW-4/A Dr.K.Goel PW-4 opined that the cause of death was cranio cerebral injury as a result of blunt force impact over head. He could not opine the time since death and stated that approximately it may be two-three hours. The wicket used in the game of cricket was stated to be recovered at the instance of Shahnaz which was shown to Dr.K.Goel who opined that the injuries over the skull and both legs mentioned were possible by that object or by such similar other object.

14. Merely on the basis of the post mortem report and the recovery of wicket which an ordinarily available object with no blood stains found on it, we are of the opinion that the prosecution has failed to prove the chain of circumstances against Shahnaz ruling out every hypothesis of her innocence. Consequently, she is granted the benefit of doubt and the judgment of conviction dated November 25, 2013 and the order on sentence November 30, 2013 are set aside. The appellant who is in custody be released forthwith, if not required in any other case.

15. T.C.R. be returned.

16. Two copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other to be handed over to the appellant.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 30, 2014
‘vn’