

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

% *Judgment Reserved On: 27th January, 2010*
Judgment Delivered On: 2nd February, 2010

+ **CRL.APPEAL NO.180/2003**

CHATTAR PAL SINGHAppellant
Through: Mr.Sumeet Verma, Advocate

Versus

STATERespondent
Through: Ms.Richa Kapoor, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

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

PRADEEP NANDRAJOG, J.

1. Vide impugned judgment and order dated 24.1.2003 appellant Chattar Pal Singh has been convicted for the offence of having murdered his wife Laxmi Devi by firing at her with a pistol. He has been sentenced to undergo imprisonment for life and to pay a fine in sum of Rs.10,000/-; in default of payment of fine he has been sentenced to undergo simple imprisonment for a period of 5 months.

Appellant has also been convicted for the offence punishable under Section 27 of the Arms Act for which offence he has been sentenced to undergo rigorous imprisonment for a period of 1 year and to pay a fine in sum of Rs.1,000/-; in default of payment of fine he has been sentenced to undergo simple imprisonment for a period of 2 months.

2. It is not in dispute that on 2.9.2000 at about 7:00 PM Smt.Laxmi Devi received gun-shot injury while she was present at her matrimonial house bearing Municipal No.H-19, Harkesh Nagar. It is further not in dispute that Smt.Laxmi Devi was married to appellant Chattar Pal Singh for about 7-8 years prior to her death and from the said wedlock two children being a son and a daughter were born.

3. The learned Trial Judge has convicted the appellant for the offence of murder on the basis of an oral dying declaration made by the deceased to the police officials; namely SI Sunil Mittal PW-15, HC Jagat Kumar PW-14, HC Balwan Singh PW-3 and ASI Ramji Lal PW-2 who reached the spot on getting information of the crime. The dying declaration was made at the spot soon before the deceased, then lying injured was removed in the PCR van by ASI Ramji Lal PW-2. The recovery of a country made revolver Ex.P-1,

stated to be the weapon of offence, at the instance of the appellant, pursuant to his disclosure statement Ex.PW-3/C has also been held to be further incriminating evidence. Though, a bullet was also recovered from the dead body of the deceased, but the pistol and the bullet could not be linked as the striation marks present on the bullet were insufficient for comparison. However, as per the FSL report Ex.PW-15/D, the bullet corresponded to the bullet of 8mm/.315" cartridge and could have been fired through a country made pistol like the one recovered at the instance of the appellant. For the purpose of establishing a motive for the crime, the learned Trial Judge has held that the testimony of the father of the deceased i.e. Shiv Charan Singh PW-7 and brother of the deceased i.e. Ranbir PW-8 prove a matrimonial dispute and discord between the appellant and his wife and hence the motive for the husband to kill the wife.

4. Process of criminal law was set into motion when at 7:15 A.M. on 2.9.2000 information was received at PS Okhla Industrial Area about a gun-shot being fired in House No.H-19, Harkesh Nagar, New Delhi and DD No.31 Ex.PW-12/A was recorded. SI Sunil Mittal PW-15 was entrusted the investigation of the DD and accompanied by HC Jagat Kumar

PW-14, HC Balwan Singh PW-3, he reached the spot. ASI Ram Ji Lal PW-2, who was posted in the PCR van stationed near the place of occurrence also reached there as his van received said information over the wireless. Smt.Laxmi Devi was lying injured in the house and upon being queried as to how she got injured, she responded that her husband, appellant Chhattar Pal fired at her. In the PCR van of ASI Ramji Lal, SI Sunil Mittal removed Laxmi Devi to All India Institute of Medical Sciences, where she was declared brought dead. SI Sunil Mittal collected the MLC Ex.PW-10/A of the deceased. He prepared an endorsement Ex.PW-15/A under the copy of DD No.31 and sent the same for registration of an FIR through HC Jagat Singh.

5. On the same day, SI Sunil Mittal arrested the appellant Chhattar Pal, interrogated him and recorded his disclosure statement Ex.PW-3/C. Pursuant to his disclosure statement, he got recovered a country made revolver consisting of a live cartridge Ex.P-2 and an empty cartridge Ex.P-3, which was seized vide memo Ex.PW-3/D.

6. On 3.9.2000, at 12:00 noon Dr.Sunil Kumar PW-11 conducted post-mortem on the dead body of Laxmi Devi and prepared his report Ex.PW-11/A. He noted the following injury on the person of the deceased:-

“(1) Firearm entry wound on the left side of the posterior chest wall placed in the 5th intercostal space 12 cm left to midline and 116 cm above the left heel, measuring 2 cm in length and 1 cm in breadth – cavity deep. Tattooing present.

Tract – The firearm missile has passed through upper border of the lower lobe after piercing through skin, subcutaneous tissue and muscle, then it went through whole thickness of upper lobe of left lung which came out at the apex; then it reached the left side of the neck causing laceration of left jugular vein anteriorly. There was haematour around.”

7. Dr.Sunil Kumar also recovered a bullet from the body. The post-mortem report records as under:-

“Bullet was recovered from right atrium. Bullet approached the heart through venous circulation.”

8. It is obvious that the opinion qua the death of Laxmi Devi was her dying due to haemorrhagic shock resulting from the firearm injury.

9. SI Sunil Mittal sent the pistol recovered at the instance of the appellant and the bullet recovered from the dead body to FSL ballistics for comparison. As per the FSL report Ex.PW-15/D, the country made pistol had an 8 mm bore and the bullet recovered from the body of the deceased corresponded to 8 mm cartridge but due to insufficient striation marks no opinion could be given that the bullet was fired from the firearm in question.

10. The appellant was put to trial and 15 witnesses were examined by the prosecution. Relevant amongst those are father of deceased i.e. Shiv Charan Singh PW-7 and brother of deceased i.e. Ranbir PW-8 and SI Sunil Mittal PW-15, HC Jagat Kumar PW-14, HC Balwan Singh PW-3 and ASI Ramji Lal PW-2.

11. Shiv Charan Singh PW-7 deposed that deceased was his daughter. She was married to appellant about 7 years back and had two children; being a son and a daughter. After 2 to 4 years of her marriage, appellant started harassing the deceased and started demanding money from her. Being fed up of the harassment by the appellant the deceased left her matrimonial house and stayed with them for a year. After that, on assuring them that the deceased would not be troubled the appellant took back the deceased to his house. However, after sometime of her going back, the appellant again started demanding money and threatening to harass the deceased if the demands were not fulfilled. Within a few days of PW-7 expressing his inability to fulfill the demands of the appellant, he learnt about the death of his daughter.

12. Ranbir PW-8 deposed *pari materia* and in harmony with his father.

13. SI Sunil Mittal PW-15 deposed that at about 7.15 P.M., on 2.9.2000 he was entrusted the investigation of DD No.31. When he reached the spot H-19, Harkesh Nagar, he found a lady lying in injured condition. Lady told him that her husband had fired on her. In the meantime, PCR van also reached the spot and he took the lady to All India Institute for Medical Sciences, where the doctor declared him brought dead. On being cross-examined, he stated that he received a call at 7:15 P.M., and he reached the spot within 5 minutes of the same. PCR van reached within a fraction of second after his reaching there.

14. HC Jagat Kumar PW-14 deposed that on 2.9.2000, he accompanied SI Sunil Mittal to H-19 Harkesh Nagar for investigation of DD No.31. On reaching there they found a lady lying injured. On enquiry she disclosed her name as Laxmi Devi wife of Chhattar Pal Singh and told them that her husband shot at her and thereafter fled away. PCR van also reached the spot and SI Sunil Mittal removed Laxmi Devi to the hospital, where she was declared brought dead. On being cross-examined, he stated that they reached the spot within 5 minutes of their receiving information, and the PCR van reached the spot immediately after their reaching.

15. HC Balwan Singh PW-3 deposed that at about 7.15 P.M., on 2.9.2000 on receipt of DD No.31, he accompanied SI Sunil Mittal to H-19 Harkesh Nagar. They found a lady lying injured there. On enquiry, she stated "mere pati Chhattar Pal ne mujhe goli maar di". She disclosed her name as Laxmi Devi. PCR van took her to the hospital where she was declared dead.

16. ASI Ramji Lal PW-2 deposed that on 2.9.2000, he was posted in PCR van. At about 7.15 P.M., on 2.9.2000, he received information about a firing incident at H-19 Harkesh Nagar, whereupon he reached said place. Chowki Incharge along with staff also reached there. They found a lady lying injured with a gun-shot injury, groaning in pain and learnt that her name was Laxmi Devi wife of Chattar Pal Singh. The lady told them that her husband Chhattar Pal had fired at her. He removed the lady to the hospital in the PCR van, where the lady was declared dead.

17. At the hearing of the appeal, referring to a decision titled Pawan Kumar @ Sonu Vs. State Crl.A.No.30/2006 delivered on 27.2.2009 by a Division Bench of this Court of which one of us, namely, Pradeep Nandrajog, J. was a Member, counsel urged that the Medical Jurisprudence guides that the

collapsing of a lung of a person causes instant death of the person. Counsel urged that in the instant case, since the bullet travelled through the left lung to the left side of the neck, the lung ought to have got punctured and resulted in the instant death, thereby preventing the deceased from being conscious to be able to make a dying declaration to anybody who reached the spot soon after her receiving the bullet injury. Counsel urged that in this view it is apparent that PW-2, PW-3, PW-14 and PW-15 have stated incorrect facts.

18. In Pawan Kumar's case (supra) the issue of the deceased in said case being conscious and in a position to make an oral dying declaration to his wife came up for consideration with reference to the testimony of the wife of the deceased that she was present in her house which was about 500 meters away from the spot in the market where her husband was fatally stabbed and information of the fight being given to her by a small boy who came to her house. Holding that it was apparent that the young boy would consume some time to reach the house of the witness i.e. the wife of the deceased, who would require further time to walk/run from her house to the spot and that this would reasonably eat away 10 minutes to 15 minutes when the quarrel commenced, question

posed was whether the injured would be conscious at the time when his wife reached him. Noting that injury No.1 had pierced the right lung, injury No.2 had pierced the liver and 7 more injuries being injuries No.3 to 9 had pierced the intestines resulting in excessive loss of blood in the lungs, the liver and the small intestines, it was held that it was apparent that the deceased could not have survived for the next 15 minutes, in any case so acute was the blood loss that it was improbable that the injured was conscious. In the facts of the said case medical jurisprudence was noted pertaining to the collapse of the lungs and the resultant disability to speak.

19. The present case is clearly distinguished from the aforementioned case cited by the counsel for the appellant. The reason being, Laxmi Devi received only a single firearm injury. The bullet entered her body through the left side of the chest and piercing through the upper lobe of left lung, exited at the apex of her lung and reached the left jugular vein on the left side of her neck. The bullet was recovered from the right atrium of the heart, and the post-mortem report clearly states that the bullet approached the heart through venous circulation. Obviously, the bullet could have reached the heart through the venous circulation, only if the heart continued to

pump blood, till the bullet reached the heart. This, rules out the deceased suffering an instant death, as had she died instantaneously, the heart would have immediately stopped pumping and the bullet could not have reached the heart.

20. In any case, we may note here that as per Modi's 'Medical Jurisprudence and Toxicology' 23rd Edn. at page 821 it is opined:-

“Wounds of the lungs may be immediately fatal from profuse haemorrhage, or from suffocation due to respiratory embarrassment on account of the presence of blood in the pleural cavity or in the air-passages, or may result in death subsequently from septic pneumonia.”

21. Clearly, there is no rule that a puncturing of the lung would definitely lead to an instant death. Even in Pawan Kumar's case (Supra), it was only with reference to the fact that the deceased in said case had received in all 9 injuries, all on vital parts of the body being lung, liver and intestines, that it was held that it was unlikely that the deceased would have survived for the next 5 to 10 minutes to be able to make a dying declaration to his wife, on her arrival.

22. Having stated so, now the question arising for consideration is that in the instant case for how long could the heart have continued to pump. We note here, that both PW-15

and PW-14 have stated in their cross-examinations that they reached the spot, within 5 minutes of their receiving information. Now, the first information received at PS Okhla Industrial Area was by way of DD No.31. Said DD merely records about a firing incident having taken place. It does not record as to who fired at whom. Clearly, whoever informed the police station, had only heard the fire shot and without having gone inside the house to check as to who had shot or who was shot, had informed the police station. Thus, the information must have reached the police post, immediately after the fire was shot and as stated by PW-15 and PW-14, within 5 minutes of receiving of information, they reached the spot. Thus, all that requires to be seen is, could Laxmi Devi have survived for this 5-7 minutes of the information being conveyed to the police post and the police officials reaching there, so as to be able to tell the said police officials that her husband had killed her.

23. A reading of the post-mortem report evidences that the bullet reached the left side of the neck causing laceration of left jugular vein anteriorly, and thereafter through the venous circulation, the bullet approached the heart. We have gone through medical jurisprudence on Venous circulation and

jugular veins. From an article titled "*A small internal Jugular Vein*" authored by B.R.Stickle and H.McFarlane, we find that Jugular Veins are of two kinds: External Jugular Vein (EJV) or Internal Jugular Vein (IJV). The EJV forms part of the superficial venous system of the head and neck. With its tributaries it drains the superficial structures of the face, scalp and posterolateral neck. The IJV is part of the deep venous drainage system of the head and neck and collects blood chiefly from the brain, with a smaller contribution from superficial parts of the face and anterior neck. A statistical analysis was carried out with the aid of the Statistical Package for The Social Sciences (SPSS) for Windows, in which fifty patients were studied of whom 19 were women and 31 were men. The study was conducted only after anaesthetizing all the patients. The results of the study show that mean IJV diameter was 17.4 mm and mean EJV diameter was 9.3 mm. There was no correlation between weight, height or neck size and IJV diameter. However, there was a significant negative correlation between EJV diameter and IJV diameter, meaning that those who had EJV of diameter 7 mm or greater, had IJV of less than or equal to 15 mm. Those who had EJV of diameter less than 7 mm had an IJV of minimum 20 mm or greater.

24. From the afore-stated, we know that usually either of the Jugular veins; be it internal or external, would be of at least a diameter of 7mm.

25. Now, from the FSL report, Ex.PW-15/D, we know that the bullet recovered from the body corresponded to a bullet of 8mm/.315" cartridge. The measure 8 mm refers to the diameter of the cartridge and the projectile, both of which make a bullet. Whenever a fire is shot, the part of the bullet that usually enters the body is the projectile and the cartridge gets retained within the pistol or falls at the spot. Since cartridge is the outer covering of the projectile, the projectile ought to have a diameter less than the diameter of the cartridge. Thus, assuming that the projectile which entered the body was anything less than 8mm in diameter, we see every possibility of the bullet having reached either of the left IJV or EJV in the neck of the deceased, and from there of reaching the right atrium of the heart through the circulation of blood through veins.

26. Unfortunately, we do not know whether the vein through which the bullet approached the heart was IJV or EJV. But, be it either of these, we know that the mean EJV is 9.3 mm and the mean IJV is 17.4 mm. Thus, unless the deceased

fell in an extraordinary category, there is every possibility that the bullet reached the heart, slowly through the venous circulation and till it reached the heart, the deceased remained alive.

27. We see no reason to hold that the deceased could not have stayed alive and should have died an instant death. Why should 4 police officers tell a lie? No motive has been suggested for the same. We thus hold that the testimonies of the police witnesses PW-2, PW-3, PW-14 and PW-15 are true and the oral dying declarations made to them is sufficient evidence to convict the appellant for the murder of his wife. The motive for the appellant to do so also stands proved by the testimony of PW-7.

28. We find no merit in the appeal.

29. The appeal is dismissed.

**(PRADEEP NANDRAJOG)
JUDGE**

**(SURESH KAIT)
JUDGE**

**FEBRUARY 02, 2010
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