

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: 06.07.2010
Judgment Delivered on: 07.07.2010

+ **CRL.A 273/1997**

SHANKAR & ANR.

..... Appellants

- versus -

STATE (N.C.T) OF DELHI

.....Respondent

Advocates who appeared in this case:

For the Appellant : Mr Vikran Sarin

For the Respondent : Mr Lovkesh Sawhney

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V.K. JAIN

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. This appeal is directed against the judgment and Order on Sentence dated July 5, 1997, whereby the appellants were convicted under Sections 449 and 302 of IPC read with Section 34 thereof and were sentenced to undergo R.I. for life and to pay fine of Rs.2,000/- each or to undergo R.I. for one year each in default under Section 302/34 of IPC and were further sentenced to undergo R.I. for 5 years each and to pay fine of Rs.1,000/- each or to undergo R.I. for 6 months each in default under Section 449/34 of IPC.

2. On 20th December 1993 at about 8.42 AM Police

Control Room informed Police Station Srinivas Puri that one person had been stabbed in 11/25 Nehru Nagar and had died on the spot. The information was recorded vide DD No. 3A of the Police Station. On receipt of copy of DD, Inspector Ram Kishan, SHO Police Station Srinivas Puri went to the spot and found dead body of deceased Joginder Kumar in the house. He recorded the statement of Hem Lata, wife of the deceased, who met him on the spot. Hem Lata stated that her husband, who was working a lottery shop, had borrowed Rs.3,000/- from Mohan Lal, who was engaged in the business of lottery in Lajpat Nagar. She also stated that for the last 3-4 days Mohan Lal and his son Shankar had been visiting their house and demanding the amount of Rs.3,000/- borrowed by her husband and that they had been seeking time from him for repayment of the loan. She also stated that on 19th December 1993 at about 10.00 PM, when all of them were present in the house, Mohan Lal and Shankar knocked at the door, which was opened by her husband Joginder. On coming inside, Mohan Lal and Shankar started beating her husband. Shankar was carrying a long *Suan* like weapon with him. When she came forward to save her husband, Mohan Lal pushed her as well as her mother and slapped them. Mohan Lal then caught the hands of her husband, whereas Shankar

gave blow, using a *Suan* like weapon, on the left side of his chest, as a result of which her husband fell on the cot. Thereafter, both of them left after threatening her and her mother-in-law, in case they reported the matter to the police. While leaving, they bolted the door from outside. Thinking that her husband had slept, she did not raise alarm in the night. In the morning she found her husband dead and also noticed blood on the left side of his chest. His vest and shirt were also found soaked with blood. She and her mother-in-law raised alarm and knocked at the door, which was opened by her maternal uncle who was residing in her neighbourhood. She claimed that Shankar and Mohan Lal had murdered her husband.

3. The prosecution examined 16 witnesses in support of its case. No witness was examined in defence. PW-3 Shanti Devi, PW-4 Hem Lata, PW-14 ASI Rasal Singh, PW-15 Inspector Ram Kishan and PW-16 Dr. L.C. Gupta are the material witnesses.

4. PW-3 Shanti Devi, who is the mother of the deceased, stated that on 19th December 1993, both the accused came to their house at about 10 PM and demanded money from their son. They gave beating to him. When she and Hem Lata intervened, they pushed them, as a result of which they fell

down. The accused Shankar was having a *Suan* in his hand and he gave a *Suan* blow on the chest of her son Joginder. At that time, accused Mohan Lal had caught hold of Joginder. Her son fell down on receiving injury. Both the accused left after threatening them not to report the matter to the police. She further stated that finding that Joginder had slept, she and Hem Lata also went to sleep. In the morning they found Joginder lying dead. His vest was soaked with blood. She identified Ex.P-1 as the *Suan* with which her son was stabbed. In cross-examined she stated that she became unconscious when she fell after the accused had pushed her.

5. PW-4 Smt. Hem Lata, wife of the deceased, corroborated the deposition of her mother-in-law and stated that she was also slapped by accused Mohan Lal. She also identified Ex.P-1 as the *Suan* with which her husband had been stabbed. In cross-examination, she stated that her husband had neither cried nor raised an alarm, when he was stabbed with *Suan* and that she did not go near her husband to see the injury on his person. She also stated that she did not try to see her husband in the night of 19th December 1993 and they did not inform anyone in the night, when her husband was stabbed with *Suan*.

6. PW-14 ASI Rasal Singh had stated that while in

police custody, the accused Shankar led them to a drain near PGDAV College and got recovered one *Gupti* from there, after taking it out from the bushes. According to him Ex.P-1 is the *Gupti/Suan* got recovered from the accused. PW-15 Inspector Ram Kishan is the IO of the case. He has corroborated the deposition of PW-14 regarding recovery of *Gupti* and has identified the weapon Ex.P-1.

7. PW-16 Dr. L.C. Gupta conducted the postmortem on the dead body of the deceased and found the following injuries on his person:-

“incised stab wound of elliptical shape of 1.2X3cmXchest cavity deep placed at left side front of chest, 2 cm above and outer to left nipple, in 3rd intercostals space, it was 13 cm below mid clavicular point, lower end of wound was contused and margins of wound were clear cut, well-defined and regular.

2. Abrasion of 1.5X.6 cm at left side base of nose.

3. Cresentric abrasion present over outer part of right side forehead, right mallar of face, right side face cheek, right side forehead, back of right forearm.

Skull was NAD, brain was pale, cerebral vessels were empty. Orbital nazal, aural cavities NAD. Mouth, tongue and pharynx Neck, Lyranx and thyroid and other neck structures NAD. Chest. On the right side of front of chest in continuation to injury No.1 a treack is communicating from middle lobe of lung (lingual part) in which a clear cut was present of size 1X1.5 cm and it was further communication to left ventrical then right ventrical after crossing inner verticular septum.”

According to him cause of death was internal haemorrhage shock, due to injury No.1 to heart and lung. He has also opined that injury No.1 could be inflicted with the weapon Ex.P-1.

8. In their statements under Section 313 Cr.P.C. the appellants denied having lent money to deceased Joginder and having gone his house on 19th December, 1993. Both of them claimed to be innocent.

9. The trial court convicted the appellants believing the testimonies of PW-3 Shanti Devi and PW-4 Hem Lata, though the evidence produced by the prosecution regarding recovery of the *Suan/Gupti* Ex.P-1 was disbelieved.

10. According to PW-4 complainant Hem Lata, her husband neither cried nor raised any alarm when he was stabbed with the *Suan*. We find it difficult to accept that a person, who is beaten by two outsiders in his own house in the presence of his wife and mother and the beatings given to him were followed by pushing his mother and wife and slapping his wife, would not raise an alarm in order to save himself and his mother and wife. The natural conduct of a person in such a situation would be to raise an alarm so that, hearing the alarm, his neighbours can come to their rescue and save them from further harm at the hands of the

intruders. This is more so when the intruder is armed with a weapon, which would naturally make him apprehensive that the weapon was likely to be used against him and a close relative of the persons subjected to beating is residing in the neighbouring house and, therefore, he can be hopeful of getting help from him and other persons in the neighbourhood. He will at least make an attempt to get help by raising alarm so as to draw the attention of the neighbours towards his house. It is, therefore, difficult for us to accept the version given by PW-3 Shanti Devi and PW-4 Hem Lata in this regard.

11. Neither Smt. Shanti Devi nor Smt. Hem Lata raised alarm when the appellants allegedly entered their house, gave beatings to Joginder, slapped Hem Lata and gave *Suan* blow on the chest of Joginder or after they had left their house, leaving Joginder in injured condition. Joginder was none other than the son of Shanti Devi and husband of Hem Lata. The attempt of the mother and the wife of the victim in such circumstance would be to at least raise alarm particularly when they are in their own house and can be reasonably confident of getting help in the event of alarm being raised by them. Therefore, the conduct of Smt. Shanti Devi and Smt. Hem Lata in not raising any alarm either during presence of

the appellants or after they had left, creates a serious doubt on their presence at the time of the incident. Presuming that being ladies, they had got scared and, therefore, did not raise alarm in the presence of the accused persons, they had no reason to continue to be afraid of the accused persons, once they had left the house after causing injury to Joginder. It is difficult to believe that the mother and wife of the injured would not raise alarm in their own house even after the assailants have left.

12. Admittedly, PW-3 Shanti Devi and PW-4 Hem Lata did not take the deceased to any hospital or any doctor, after the accused had left. The deceased, having been beaten and given blow with a deadly weapon in his chest, the first attempt of his family members would be to take him to the hospital, so that medical aid may be provided to him. It defies logic that the mother and wife of the injured would not make any attempt to take him to the doctor or to call the doctor to their place, despite his having received to a serious injury at a vital part of his body. According to these witnesses, the deceased had fallen on the cot and had slept. If the injured becomes unconscious immediately on injury being inflicted on him, the apprehension of the family members would be that he has probably succumbed to the injury and in that case their first

attempt would be to take him to the hospital, so that he may be treated for the injury caused to him. They will not presume that the man, who was attacked at the most vital part of his body, with a sharp weapon, had just gone to sleep and did not require any medical attention. If the injured does not become unconscious immediately on being injured, he would be seething with extreme pain, when attacked with a deadly weapon and, therefore he would ask his family members at that time to immediately take him to the doctor or call the doctor at home for the purpose of his treatment and they would accordingly rush him to the hospital, or call a doctor to attend him. Since PW-3 and PW-4 admittedly did not make any attempt to provide medical aid to the deceased, the logical inference is that, in fact, they were not present at the time the deceased was attacked in his house. Had they witnessed the incident, as claimed by them, their first attempt would have been to take him to take hospital with the aid of their neighbours, including their close relative, who was residing in the adjoining house.

13. Admittedly, PW-3 and PW-4 did not inform PW-2 Gyan Chand, brother of PW-3, Shanti Devi even after the accused persons had left their house, leaving deceased Joginder in injured condition. In the ordinary course of

human conduct, Gyan Chand being their close relative and immediate neighbour, they would have either rushed to him or would have informed the police, after the assailants had left their house. Though the case of the prosecution is that accused persons had bolted the door from outside while leaving the house of Joginder, no such statement was made either by PW-3 and PW-4 when they came in the witness box. Even PW-2 Gyan Chand did not say that when he went to the house of Joginder, he had found the door bolted from the outside. In any case, even if the door was bolted from outside, nothing prevented PW-3 and PW-4 from raising alarm and seeking help of the neighbours, to open the door.

14. Considering the conduct of PW-3 and PW-4 in (i) not raising any alarm either in the presence of the accused persons or after they had left (ii) not making any attempt to take Joginder to doctor or to call the doctor to attend him (iii) not reporting the matter to Gyan Chand or any other neighbour and the police, is a strong indicator that they had not witnessed the incident, as claimed by them.

15. According to PW-4 Hem Lata, wife of the deceased, she did not even go near her husband to see the injury on his person. It is extremely difficult to accept that the wife of a person, who has been injured with a deadly weapon in her

presence, would not even have a look at the injuries sustained by her husband. Her first attempt, after the assailants have left, would be to check the body of her husband to see the injuries sustained by him and to ask him how he was feeling. No one falls asleep as a result of an injury, though he may become unconscious. If the husband does not respond, the wife, instead of presuming him to be asleep, would apprehend that either he had succumbed to the injuries or had become unconscious. She would not just go to sleep, presuming the husband to be alright. According to her, during night, she did not try even to see her husband. This again, is not expected from the wife of a person injured by using a deadly weapon having blade measuring 27 cms.

16. According to PW-3 and PW-4, Ex.P-1 is the weapon used by the accused Shanker for causing injury to the deceased. A perusal of the report of CFSL would show that on scientific examination, blood was detected on the pant, shirt, jacket, vest/baniyan of the deceased as well as on the weapon exhibit Bio/B sent to the laboratory. The report further shows that human origin of the blood was confirmed only on pant marked Ex. Bio/A1, shirt marked Bio/A2 and vest/Baniyan Bio/A4, which means that the blood found on the weapon marked Bio/B1 was not of human origin. When the Senior

Scientific Officer, who examined the exhibits reported that human origin of the blood was confirmed on Exs. Bio/A1, Bio/A2 and Bio/A4 only he was ruling out human origin of the blood on the weapon marked Bio/B. If the blood found on the weapon Bio/B was not human blood that means it was not the weapon used for causing injury to the deceased. Since PW-3 and PW-4 have specifically identified the very same weapon as the weapon used by the accused Shanker for causing injury to deceased Joginder, the necessary inference is that these witnesses did not witness the incident and that is why they identified Ex.Bio/B as the weapon of offence, they being interested only in conviction of the appellants, even if they had to tell a lie for this purpose. It will, therefore, not be safe to rely upon the testimony of such witnesses in the facts and circumstances of the case.

17. Before the Court bases conviction on the testimony of an eye-witness, it must be satisfied that he is a truthful witness so that implicit reliance can be placed on his testimony. In order to form basis of conviction, the testimony of the eye-witness should be such that it inspires confidence and leaves no reasonable doubt about his presence at the scene of occurrence. If the behaviour of the person claiming to be an eye-witness is contrary to the course in which a

similarly situated person would normally behave and there is no satisfactory explanation for such an abnormal conduct, it will not be safe to base the conviction solely on the basis of his testimony, since his very credibility stands impeached and becomes suspect on account of such a behaviour.

18. No doubt post incident conduct varies from person to person and different persons may react differently in similar situation. The conduct of a witness can be termed as 'unnatural', when the reaction demonstrated by him is so improbable or so inconceivable, that it cannot be expected from a human being placed in the situation, in which he was placed. But, when the conduct is so strange and unnatural that no person is likely to act in the way he is found to have acted, it will be totally unsafe to make his testimony the sole basis of conviction for a serious offence such as murder.

19. If the testimony of PW-3 and PW-4 is excluded from consideration, there is no other evidence to connect either of the appellants with the murder of deceased Joginder. The Trial Court has disbelieved the alleged recovery of *Gupti/Suan* at the instance of the appellant Shanker. Even if we believe the alleged recovery that does not advance the case of the prosecution in any manner, since the prosecution has failed to prove that the murder of the deceased was committed using

this very weapon. As noted earlier, the blood on this weapon was not found to be of human origin, which rules out the possibility of its having been used for committing murder of deceased Joginder.

20. For the reasons given in the preceding paragraphs, the impugned judgment and Order on Sentence are set aside and both the appellants are hereby acquitted. Their Bail Bonds stand discharged.

(V.K. JAIN)
JUDGE

(BADAR DURREZ AHMED)
JUDGE

JULY 07, 2010

Ag/bg