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

% *Judgment Reserved on : 06.07.2009*
Judgment Pronounced on : 08 .07.2009

\+ **CRL. APPEAL NO.08/2001**

VIJAY PAL ...APPELLANT
Through : Mr.Sumeet Verma, Amicus Curiae.

VERSUS

STATE ...RESPONDENT
Through : Mr.Pawan Sharma, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the 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 the Digest? Yes.

PRADEEP NANDRAJOG, J.

1. Case of the prosecution is that the deceased Archana Devi was married with the appellant Vijay Pal on 2.5.1996. In the intervening night of 4.5.1996 and 5.5.1996, Archana Devi was strangulated to death by the appellant Vijay Pal as also the co-accused i.e. the father of the appellant, his mother and his cousin Arjun Singh, all of whom were present in the house where Archana Devi was murdered.

2. Unfortunately, there is no evidence led as to under what circumstances, how and when, information was first received by the police about the death of Archana Devi which triggered the investigation of the instant case. The evidence on record commenced with proof of the fact that ASI Jagdish Parshad reached the house where the deceased was murdered i.e. her matrimonial house around 8 A.M. on 5.5.1996.

3. He met Shyam Vir Singh, the father of Archana Devi, and recorded his statement Ex.PW-5/A to the effect that Archana was married to Vijay Pal on 2.5.1996 and that he had given dowry according to his means, but the accused persons namely Vijay Pal, his parents and his cousin i.e. the co-accused were not satisfied with the dowry and had demanded Rs.31,000/- in cash and a motorcycle. He could not meet the said demand and therefore he suspected that the accused persons had murdered his daughter.

4. ASI Jagdish Parshad made an endorsement Ex.PW-7/A on the statement of Shyam Vir Singh and on the basis of the same got an FIR Ex.PW-7/B registered at around 10.45 PM. He summoned Uday Vir PW-3, who took photographs Ex.P-6 to Ex.P-8 of the dead body and the place of the crime. The dead body was sent to the General Hospital Gurgaon for post-mortem.

5. Since the death of Archana Devi was caused under suspicious circumstances within seven years of her marriage, and the father of the deceased had told the investigating officer that his daughter was harassed for dowry, ASI Jagdish recorded a prima facie opinion that at least the offence punishable under Section 304-B/34 IPC as also Section 498-A/34 IPC was made out.

6. The accused persons were arrested and interrogated. On 6.5.1996, the appellant Vijay Pal made a disclosure statement Ex.PW-5/L, wherein, inter-alia he disclosed that he had strangulated to death his wife and could get recovered from a room in the house a 'Rassi' (rope) i.e. ligature material used to strangulate her to death. Thereafter, the appellant led the investigating officer to a room in the house and got a rassi (rope) recovered from beneath a trunk lying in the south east corner of the room situated to the south east of the house. The same was seized by ASI Jagdish Prasad vide seizure memo Ex.PW-5/M.

7. On 6.5.1996 Dr.S.K.Sharma PW-2 conducted the post-mortem of the dead body at 11:30 AM at the General Hospital, Gurgaon and prepared the post-mortem report Ex.PC. Dr. S.K.Sharma opined that the body had a faint ligature mark which was almost horizontal on the upper part of the neck. He

opined the cause of death to be asphyxia due to ligature strangulation. The viscera of the deceased was handed over to the investigating officer who in turn forwarded the same for forensic opinion and the report was furnished to him that no poison was detected. In view of the post-mortem report, prima-facie offence of murder was made out.

8. Charges were framed against the accused for the offence punishable under Section 302/34 IPC and alternatively under Section 304-B/34 IPC as also the offence punishable under Section 498-A IPC. For record it may be noted that since the crime was committed in Gurgaon (Haryana) the chargesheet was filed in the Court of the District Judge, Gurgaon and charges were framed by him. Thereafter, under orders of the Supreme Court, the trial was transferred to Delhi and evidence was recorded by a Sessions Court in Delhi.

9. At the trial, the prosecution examined seven witnesses. Needless to state, Dr.S.K.Sharma PW-2, proved the post-mortem report Ex.PC and also deposed that the rope Ex.P-5 recovered by the investigating officer as recorded in the seizure memo Ex.PW-5/M could be the one with which the deceased was strangulated. Uday Vir PW-3, proved the photographs Ex.P-6 to Ex.P-8 and the negatives Ex.P-9 to Ex.P-11 taken by him.

10. Jag Pal PW-4 deposed that he was a cousin of the deceased and that the deceased was married with the appellant on 2.5.1996 and that nothing untoward happened after the marriage and that no dowry was demanded.

11. Shyam Vir Singh PW-5, the father of the deceased deposed that deceased Archana was his daughter and she was married to the appellant on 2.5.1996. He gave Rs.21,000/- in cash, one scooter, a television, a table fan, a cooler, a sewing machine and some other articles as dowry. The marriage was solemnized peacefully. On 5.5.1996, the accused sent a relative to inform them that Archana had fallen sick. His wife, his niece, his sister-in-law, his sister, Chander Pal PW-6, a relative Birender and he went to the house of the appellant. The police were already present when they reached. They found Archana dead. He identified her dead body. The police officer read over a statement to him which he found correct and signed it. The accused persons were taken to the police station in his presence but were not arrested in his presence.

12. On being cross-examined by the learned APP he denied having told the investigating officer that the accused persons had demanded Rs.31,000/- in cash and a motor-cycle and that as he could not fulfill the same, they killed Archana.

13. Relevant would it be to note that on being cross-examined by counsel for the appellant, he denied that his daughter was not willing to marry the appellant Vijay Pal as he was less educated than his daughter.

14. Chander Pal Singh PW-6 deposed that after the marriage of the appellant with the deceased no incident of dowry demand took place and that the marriage was solemnized peacefully.

15. Insp. Shiv Narain PW-7, deposed that the investigation of the case was done under his supervision. On 5.5.1996 the investigation of the case was conducted by ASI Jagdish Parshad. ASI Jagdish Parshad had expired and that he recognized the handwriting of ASI Jagdish Parshad and that the disclosure statement Ex.PW-5/L of the appellant as also the recovery memo Ex.PW-5/M were in the handwriting of ASI Jagdish Parshad.

16. The defence examined Taras Pal as DW-1. He deposed that Jai Pal is his brother-in-law and Vijay Pal is his nephew. Vijay Pal was married on 2.5.1996 and he stayed at the house of Vijay Pal till 7.5.1996. Vijay Pal was sleeping separate from his wife as their village followed a custom that unless a Puja was performed, the bride and groom could not even speak to each other. On the day of the incident, at about 6:00 A.M. he

woke up on hearing noises and learnt that Archana was dead. He went to the house of the parents of Archana and informed them about her death. On hearing the same, Archana's mother said to her husband that since he i.e. father of the deceased, married Archana against her wishes, Archana killed herself. On cross-examination he stated that he did not see the body of the deceased.

17. In view of the fact that the relatives of Archana departed from their statements made by them under Section 161 Cr.P.C. to the investigating officer and denied having ever told the investigating officer that after the marriage ceremony was over on 2.5.1996 and before the bride and the groom could depart a demand for dowry was raised by the accused coupled with the fact that there was no evidence that Archana was treated with cruelty after her marriage and before she died, the learned Trial Judge held that an essential ingredient of Section 304-B IPC i.e. a demand of dowry or cruelty towards the deceased was not proved. Hence, all the accused were acquitted for the charge of the offence punishable under Section 498-A IPC as also the charge for the offence punishable under Section 304-B/34 IPC.

18. There being no eye-witness and noting the fact that the evidence established the presence of all the accused in the

house and that there was no evidence to show that any outsider entered the house, the learned Trial Judge acquitted the parents of the appellant and his cousin who were present in the house in the night when Archana was killed, the learned Trial Judge has convicted the appellant for the reason the post-mortem report conclusively established that the deceased was strangulated to death and did not commit suicide coupled with the fact that the room in which the deceased died was the room in which she slept with the appellant as also the fact that the appellant got recovered the rope Ex.P-5 with the further fact that the appellant could not prove any custom that till a special puja was held he could not be in the company of his wife. We may note, on an analysis of the impugned decision, the following circumstances held relevant by the learned Trial Judge:-

a) <u>Presence of the appellant in the house at the relevant time</u>:-

   Appellant tried to prove that Archana was alone in her room on the night of the incident through DW-1 Taras Pal who deposed that as per custom, Vijay Pal could not have any relation with Archana before some prayers were performed which were to be performed the next morning. No such custom was proved.

b) Homicidal Death:-

The Post-mortem report shows that a ligature mark was found around the neck of the deceased and that the death was caused due to asphyxia due to ligature strangulation.

The plea of suicidal strangulation by the accused persons is ruled out because: firstly, it is not a case of hanging as the photographs show Archana lying on a cot and that she was found lying on the cot; secondly, according to Modi's Medical jurisprudence suicide by self strangulation is not possible.

c) Possibility of involvement of outsider is ruled out:-

There was no evidence to even remotely suggest that an outsider could have entered the house and committed the crime and left.

d) Only Vijay Pal had access to the room:-

The post mortem report opined that the time of death was 24 hours to 30 hours before the time of the post-mortem which was conducted at 11:30 AM on 6.5.1996, meaning thereby the likely time of death was between 5:30 AM to 11:30 AM on 5.5.1996. Though not expressly stated in the decision, the fact that information pertaining to the death was available with the police

before 8:00 AM evidenced by the fact that ASI Jagdish Parshad had reached the house around 8:00 AM and had met the father of the deceased who had likewise reached the house on being informed of the death, the likely time of death of the deceased has been treated to be in the early hours of the morning.

e) Recovery of ligature material i.e. rassi at the instance of accused Vijay Pal:-

The fact that the appellant got recovered the rope Ex.P-5 which was opined by PW-2 as capable of being used to strangulate the deceased.

19. We may note at the outset that Shri Sumeet Verma, learned counsel for the appellant did not challenge the fact that the deceased suffered a homicidal death for the obvious reason the alternative cause of death i.e. suicide was ruled out with reference to the post-mortem report which recorded horizontal ligature marks on the neck of the deceased. Medical jurisprudence guides us that in case of suicide the ligature marks move upwards towards the chin and are not horizontally placed.

20. The submission which was urged at the hearing held on 6.7.2009 was predicated on two decisions of the Supreme Court reported as 2009 (2) JCC 1076 *Syed Hakkim & Anr. vs.*

State and AIR 1974 SC 778 *Sawal Das vs. State of Bihar*. Both cases related to the death of a bride in her matrimonial house at a time when apart from the husband even other family members were present. In both decisions, the convictions of the husbands for the offence of murder were set aside by the Supreme Court.

21. Submission urged by learned counsel for the appellant was that there was no direct evidence that the appellant had murdered his wife. It was urged that any member of the family present in the house could be the offender. It was urged that the evidence against the appellant was no different vis-à-vis the evidence against the other accused. Counsel submitted that the appellant has been convicted on a mere suspicion.

22. Strictly speaking, there cannot be a precedent in a criminal trial for the reason each criminal trial unfolds its own story. Of course, guidance can be taken from decisions as to in what manner, incriminating evidence has been marshaled to draw inferences by Courts. We may hasten to add that such an exercise is conducted by Courts to be guided by reason and logic and not to be bound by previous decisions.

23. In *Sawal Das's* case (supra) the incriminating evidence was a fight between the mother of Sawal Das and the wife of

Sawal Das with further evidence that during the fight, mother of Sawal Das called the appellant informing him that his wife was fighting with her and further saying that either she i.e. the mother of Sawal Das or his wife would henceforth live in the house. At that, Sawal Das and his father Jamuna Parshad took the deceased inside a room and were soon followed by the mother of Sawal Das. The deceased was found dead and neighbours had seen the appellant and his father bringing a gunny bag and remove the dead body of the wife of Sawal Das. The trial court convicted Sawal Das, his mother and his father for the offence punishable under Section 302/34 IPC. In appeal, the High Court acquitted the parents of Sawal Das and convicted him for the offence punishable under Section 302 IPC. Before the Supreme Court, Sawal Das urged that there was no evidence to show or reveal as to what had happened inside the room and hence he could not be convicted for the offence of murder of his wife. Dealing with the submission, in para 12 of the decision, the Supreme Court noted as under:-

> "12. We find that the High Court had not dealt with the question whether a distinction could be made between the case of the appellant on the one hand and his father Jamuna Prasand and his step-mother Kalawati on the other quite satisfactorily, so far as the offence of murder is concerned. Nevertheless, we may have agreed with its conclusion on the evidence on record that the appellant alone was liable for the murder of his wife Smt.Chanda Devi and we may not

> have disturbed its finding of fact but for another feature of the case which stares one in the face. We proceed now to deal with this feature."

24. It is apparent from a perusal of para 12 noted herein above, that the Supreme Court recorded a finding that notwithstanding the High Court not drawing a distinction vis-à-vis the role of Sawal Das and his parents, the conviction would have been affirmed but for a peculiar feature of the case which stared the Court in its face.

25. A further perusal of the decision shows that in para 13 onward, said peculiar feature was noted being evidence on record that the maid servant of the family Geeta Kurmini who was admittedly present in the house and her not being examined. The Supreme Court discussed said facet being important and the handicap faced by the Court in not examining Geeta Kurmini, in the following words:-

> "13. ……. But, there is no explanation even attempted to show why the Maidservant, Geeta Kurmini, who, according to the prosecution case, was also in the Verandah at the time of the occurrence, was not produced at the Trial although her statement was recorded under Section 164 Criminal Procedure Code and was brought on the record (Ex.12). The statement could only be used as evidence to corroborate or contradict Geeta Kurmini if she had appeared as a witness at the trial. The appellant could, therefore, quite reasonably ask the Court to give him the benefit of the optional presumption under Section 114 Illustration (g) of the Evidence Act and to infer that if she had been produced it would have damaged the prosecution case against the appellant.

Her statement, if it had been there as evidence in the case, may very well have shown that it was Jamuna who was taking the leading part in bringing about the death of Smt.Chandna Devi. There is some evidence in the case as to the kind of man Jamuna was. It shows that he was not a naturally kind or gentle or amiable individual liked by the people. The normal inhibitions of a father-in-law with regard to his daughter-in-law, which learned Counsel for the State emphasized so much, may not really be there at all in this case. Indeed, we think that in the circumstances of the case, Geeta Kurmini, the maidservant, was a witness essential to the unfolding of the prosecution case. Her evidence could not be withheld by the prosecution whatever may be its effect upon the case. We think that the principle laid down by Privy Council in Stephen Seneviratne v. The King, AIR 1936 PC 289 at p.300 (37 Cri. L.J. 963) with regard to such a witness, is applicable here. It was observed there (at p.300):-

> "Their Lordships do not desire to lay down any rules to fetter discretion on a matter such as this which is so-dependent on the particular circumstances of each case. Still less do they desire to discourage the utmost candour and fairness on the part of those conducting prosecutions: but, at the same time they cannot, speaking generally, approve of an idea that a prosecution must call witnesses irrespective of considerations of number and of reliability, or that a prosecution ought to discharge the functions both of prosecution and defence. If it does so, confusion is very apt to result and never is it more likely to result than if the prosecution calls witnesses and then proceeds almost automatically to discredit them by cross-examination. Witnesses essential to the unfolding of the narrative on which the prosecution is based, must, of course, be called by the prosecution, whether in the result of the effect of their testimony is for or against the case for the prosecution.""

26. Instant case has no such feature as was noted in *Sawal Das's* case (supra).

27. The decision in *Saeed Hakim's* case (supra) is also clearly distinguishable as peculiar to the facts of the said case. As noted in para 3 of the said decision, two circumstances were highlighted by the trial court and the High Court to convict the appellants who were the husband and the father-in-law of the deceased. We reproduce the said two circumstances as noted by the Supreme Court:-

> "Two circumstances were highlighted to fasten the guilt on the accused. The plea of alibi set up by A-1 having been dis-believed it must be presumed that he was guilty. Similarly, in respect of A-2 plea of suicide was ruled out by the evidence of doctor (PW-9). A-2 was held to be guilty. On the aforesaid ground the trial Court convicted the present appellants and the High Court concurred with the view of the trial Court."

28. The Supreme Court held that it was settled law that in a case of circumstantial evidence the Panchsheel i.e. the five principles were well known being: (a) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established; (b) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty; (c) the

circumstances should be of a conclusive nature and tendency; (d) they should exclude every possible hypothesis except the one to be proved; and (e) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

29. It was opined that applying the said five principles, it could not be held that the twin circumstance on which convictions were sustained by the Trial Judge and the High Court were forming a complete chain to draw the presumption of guilt.

30. In the instant case the following are the incriminating circumstances against the appellant:-

(a) The room in the residential house where the deceased was killed is the room in which the deceased went to sleep and was killed in her sleep. She was married to the appellant only three days prior. There is no evidence of family custom that till a special puja was held, the appellant could not sleep with his wife. An inference has to be drawn that as all newly married couples would do, the appellant slept with his wife in the room in which she was killed.

(b) The time of death has to be the early hours of the morning for the reason by 8:00 AM when ASI Jagdish Parshad reached the house on receiving information of the death, the father of the deceased was present whose statement Ex.PW-5/A was recorded by ASI Jagdish Parshad. Obviously, somebody had informed the father of the deceased of the death and there upon he left his house and reached the house of his daughter i.e. the matrimonial house in which the appellant and the deceased were residing. It is important to note that as per DW-1 when he got up at 6:00 AM he learnt that the deceased had died and that he had himself gone to the house of the father of the deceased to break the news. Information was not transmitted over the telephone. Obviously, travelling time has to be taken into account. Thus evidence establishes that the deceased was killed prior to 6:00 AM in the morning.

(c) There is no evidence of any outsider entering the house.

(d) The rope Ex.P-5 was got recovered by the appellant. It has been opined to be the one with which the deceased could be strangulated to death.

(e) Admittedly, death is homicidal and not suicidal.

31. The recovery of the rope Ex.P-5 pursuant to the disclosure statement of the appellant followed by his leading the investigating officer to a corner of a room in his house and from beneath a trunk (hidden to the eye) getting the rope recovered and the opinion of the doctor that the ligature marks on the neck of the deceased could be caused by the rope coupled with the time of death of the deceased being early hours of the morning and the room being one amongst the various rooms in the house where the deceased slept coupled with the fact that the marriage had lasted only three days and the fact that the appellant was present in the house, form a complete chain of circumstances from which an inference of innocence can be ruled out and inference of guilt can be inferred against the appellant. It is also important to note that the line of defence adopted by the appellant, evidenced by the suggestions given to the father of the deceased, is that the deceased was unhappy with the marriage because she was more qualified than the appellant and for this reason she committed suicide. The appellant said so, as an explanation for the death of his wife, when examined under Section 313 Cr.P.C. Now, death is not suicidal. In the absence of any evidence of dowry demand or cruelty, the only

possible motive which emerges is the refusal by the wife to have anything to do with the husband, infuriating the husband, for reasons which are obvious: a denial of self by a newly married bride to the husband. But, we need not speculate for the reason it is not necessary to bring out motive in every case, though in a case of circumstantial evidence, motive assumes significance and is treated as a weighty circumstance; failure to prove not being treated as fatal.

32. In a somewhat similar facts, in the decision reported as JT 2008 (1) SC 297 *Bija & Ors. vs. State of Haryana*, acquitting the in-laws the husband of the deceased was convicted for the offence of murdering his wife on circumstantial evidence, the most important circumstance being of the husband being proved to be present in the room with his wife in the intervening night of first and second May 1998 and the dead body of his wife being found in the morning of 2nd May 1998. Notwithstanding there being other family members present in the house, the husband was convicted for the afore-noted reason.

33. It is apparent that where a housewife is killed in the matrimonial house, where, apart from the husband, other family (in-laws) members are present, the exact place and the time of death assumes importance and has received special

attention of the Supreme Court. Where the place happens to be the room where the husband and wife used to sleep and the time is either the night or the wee hours of the morning, the needle of suspicion on the husband has been held to be no longer a needle of suspicion, but a compass needle unerringly pointing towards the guilt of the husband. The reason is obvious. It is the husband and the wife who sleep together in a room and not the other family members. Anything happening in the night or the wee hours of the morning has to be accounted for by the husband and his silence is akin to owning up the guilt.

34. We find no merit in the appeal. The appeal is dismissed.

35. Since the appellant is on bail, the bail bond and surety bond are cancelled. The appellant is directed to surrender and suffer the sentence.

PRADEEP NANDRAJOG, J.

INDERMEET KAUR, J.

July 08, 2009
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