

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

% *Date of Decision: 19<sup>h</sup> January, 2010*

+ **CRL.APPEAL NO.78/2005**

RADHA KRISHAN NAIR .....Appellant

Through: Mr.K.K.Rai, Sr. Advocate with  
Mr.Bankey Bihari and Mr.S.K.Pandey,  
Advocates

Versus

STATE .....Respondent

Through: Mr.M.N.Dudeja, 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.**(Oral)

1. With reference to the eye witness account deposed to by Sanjay Kumar PW-1, the son of the appellant and finding corroboration to what he said and saw through the testimony of Neetu PW-3, vide impugned judgment and order dated

16.11.2004, the appellant has been convicted for the offence of having murdered his wife. The learned Trial Judge has also noted that as per the report Ex.PW-19/C of the serologist, the blood group of the deceased was 'O' and that blood of the same group was detected on the lungi and the underwear of the appellant which were seized at the spot where the crime was committed; for the reason the appellant was apprehended in the house when he committed the crime.

2. That Sunita, the wife of the appellant died a homicidal death is not in dispute. The post-mortem of Sunita's dead body was conducted by Dr.Gaurav Vinod Jain PW-5 and as per the post-mortem report Ex.PW-5/A as many as 7 injuries were noted on her body. The same are as under:-

"1. A deep cut throat incised wound, 12.5 cms x 6.8 cms x 3 cms present transversely over the front of neck, 6 cm s above the supra sterna notch. The injury was present at the lower level of thyroid cartilage and had cut through the under line thyroid cartilage, trachea, esophagus and jugular vessels of both the sides. The sternomastoid muscles on both sides also cut partially.

2. Muscle deep incised wound, 6.3 cm x 1.5 cm present transversely on the left side of neck 2 cm above the left lateral part of injury No.1.

3. Incised wound 3.1 cm x .5 cm over right index finger on the outer side near the face. The wound is superficial.

4. Superficial incised wound 1.5 cm x .3 cm on the palmer aspect of right ring finger, transversely over the distal interphalangeal joint.

5. Superficial incised wound 1.2 cm x .3 cm present transversely over the palmer aspect of middle of left ring finger.

6. Linear fresh abrasion 3 cm x .3 cm present obliquely over the left side of chin.

7. Fresh abrasion 3.4 cm x 3 cm over the right buttock.”

3. Internal examination revealed that death was a result of haemorrhagic shock due to injury No.1. As noted above, injury No.1 was a deep cut on the neck resulting in the trachea, esophagus and the jugular vein of both sides of neck being cut.

4. It may be noted that all injuries were opined to be ante-mortem.

5. As deposed to by Sanjay Kumar PW-1 who was aged 12 years when he deposed on 7.5.2001; the date of the crime was 3.7.2000; the place was the residential house of the appellant and the deceased.

6. Sanjay Kumar PW-1 deposed that his mother was dead. She died on 3.7.2000 and was killed by her father who was present in Court. That the weapon of offence was a knife. His father cut the throat of his mother. The incident took place

at about 10:15 PM. There used to be quarrels between his parents; cause whereof was not known to him. His father cut the throat of his mother. He was making his books. Next day they were to go to Kerala. His mother had cooked noodles. His brother Aditya was sleeping in the house. He tried to pull his father from the back to save his mother but his father pushed him aside. There was a lot of bleeding due to injury inflicted by his father on the throat of his mother. His mother died in the house itself. The house No. was O-3/2, Police Colony, Andrews Ganj, New Delhi. On seeing the incident he shouted. Neetu, their neighbour came to the house when he opened the door. Khazan Singh, another neighbour came to the house.

7. On being cross examined he stated that his father used to take him to a temple. His father had taken him to Haridwar. On returning from Haridwar his father told him that his mother was un-chaste. His father told him to tell his mother that she should live properly. There used to be frequent quarrel between his parents. He was not aware of any personal relationship which his mother had with any person. The day next to the incidence they were to go to Kerala but his mother was not wanting to go to Kerala as they had recently come from Kerala and would say as to what would people say if they

returned to Kerala. That his father made the program of going to Kerala of his own without telling anyone. That he did not know why his father wanted to send his mother to Kerala. His father had purchased the ticket of Mangla Express from Delhi to Kerala. He denied that his mother had mixed some intoxicating things in the noodles due to which his brother became sleepy. He volunteered further information that he ate the noodles and did not feel sleepy. That he ate the noodles from the plate of his father and younger brother. He admitted the suggestion that his father refused to eat noodles but stated that he did not know the reason why he refused to do so. He admitted having told the police that on the night of the incident his father told him that his mother had mixed sleeping pills in the noodle. He admitted that his father did not take dinner. He denied that on the night of the incident there was a quarrel, but admitted that in his statement made to the police he had stated that there was a quarrel between his parents in the night.

8. Neetu, the lady in the neighbourhood whose name stands disclosed in the statement of Sanjay Kumar PW-1 deposed as PW-3.

9. As per Neetu, she was present in her house with her children on 03.07.2000 and heard the noise of foot tapping from

neighbourhood. She thought that the noise was created by the children of her neighbour Radha Krishan i.e. the appellant. Thereafter she heard the voice of Sanjay Kumar PW-1 who was saying "*Nahi Achan-Nahi Achan*". She came out and push the door of her neighbour Radha Krishan and found the same was closed. She peeped inside and saw Sunita wife of Radha Krishan lying in a pool of blood. The accused Radha Krishnan was looking into the wound at the neck of Sunita. She cried "*bhai sahib ye aap ney kya kar diya*". She got perplexed and ran and called Khazan Singh. Sanjay opened the door and Sunita appeared on the door. Sunita made a gesture asking for her younger child. Two more neighbour came and lifted Sunita in their lap. She was removed to the hospital but died mid way. She identified the appellant as the accused Ram Krishnan.

10. Khazan Singh PW-4, the second person named in the deposition of Sanjay Kumar, deposed that on 03.07.2000 he was present in his quarter when Neetu (PW-3) came at about 10:25 PM and knocked at his door. When he came out he saw that Sunita standing at the door of her quarter, she was bleeding from neck. He called the PCR by dialing number 100.

11. Having perused the testimony of Sanjay Kumar, Neetu and Khazan Singh it is apparent that Neetu has

corroborated the presence of Sanjay Kumar in his house. Khazan Singh has corroborated the presence of Neetu in her house.

12. That the crime took place at around 10:20 PM in night has not been seriously disputed before us by the learned counsel for the appellant.

13. To discredit the testimony of Sanjay Kumar, learned counsel points out that there are improvements in the testimony of Sanjay Kumar which are suggestive of Sanjay's determination to ensure the conviction of his father. It is highlighted that Sanjay Kumar has deposed in Court that he not only consumed the noodles which was served to him but even ate some noodles from the plate of his father as also the plate of his brother. It is urged that Sanjay Kumar is intending to prove that his mother never put any intoxicating material in the noodles. Second contentions urged to discredit Sanjay Kumar is by pointing out that as per Sanjay Kumar his mother had died in the house itself and thereafter on his shouting Neetu came to their house. Counsel points out that as per Neetu and Khazan Singh when Sanjay opened the door they say Sunita standing on the door and the blood was oozing from her neck.

14. Both submissions urged by learned counsel are an attempt to clutch to straws.

15. Sanjay Kumar was aged 12 years when he deposed and his testimony has to be read with common sense. While deposing, with reference to the injuries inflicted upon her mother he stated that his mother died in the house itself. After making said statement he disclosed the house number and went on to state that when he shouted Neetu came and he opened the door. This does not mean that as per the witness i.e. Sanjay, his mother had died before he had opened the door. The young boy has given the narration of the events which he saw and that he mother had died is merely his opinion. Sanjay does not say that he checked the pulses of his mother.

16. The testimony of Sanjay has to be read in the light of the fact that he was aged 12 years when he deposed and saw the incident when he was 11 years of age; his utterance and deposition have to be understood and appreciated as disclosed by a child aged 12 years.

17. In his examination-in-chief, Sanjay Kumar never introduced any version about his eating noodles from the plate of his father and his younger brother. These statements of Sanjay Kumar have emanated when she has been cross-

examined by the learned counsel for the appellant. Thus, we see no scope for an argument that Sanjay Kumar has made any intentional improvements vis-à-vis what he told to the police.

18. It need hardly be stated that the giver of a fact discloses only such facts which he feels are relevant to be disclosed. It depends upon the skill of the person receiving information to extract further facts. It may happen that the investigating officer thought it irrelevant to ask any questions from Sanjay Kumar pertaining to Sanjay Kumar eating noodles when the investigation officer recorded the statement of Sanjay Kumar. That apart, the issue of Sanjay Kumar telling that he ate noodles from three plate is absolutely irrelevant.

19. From the testimony of Neetu, an important fact has emerged; the same is the contemporaneous utterances of Sanjay heard by Neetu. As per Neetu she heard Sanjay saying *"Nahi Achan-Nahi Achan"*

20. From the testimony of Sanjay Kumar it is apparent that his parents and he were natives of the State of Kerala and the word "Achan" in Malayalam means "Father". Thus, the contemporary utterances of Sanjay *"Nahi Achan-Nahi Achan"* mean "No Father-No Father". This means that when the crime was being committed or just the moment thereafter, Sanjay was

contemporaneously saying “No Father-No Father”. This also points to the fact that Sanjay was wanting his father from desisting to do something. Obviously, common sense tells us that the something was the assault on Sanjay’s mother.

21. The testimony of Neetu also establishes that the door of the house was closed when the crime was committed. No outsider was seen by her inside the house or running out. The only persons inside the house were the appellant, his wife and his two sons who were both minor.

22. What better quality of evidence can be led by the prosecution to nail the guilt of the appellant. We think no more was required to be proved.

23. That the appellant was apprehended in his house and the lungi and underwear worn by him found to be stained with human blood of the same group as that of the deceased person; wherefrom his clothes got so stained not been explained by the appellant, we concur with the view taken by the learned trial Judge that the evidence on record establishes that the appellant has committed the acts which has resulted in the death of his wife.

24. A last argument urged by learned counsel for the appellant may be noted. Counsel urges that from the testimony

of Sanjay it is apparent that there was a quarrel between the parents and as a result of quarrel, on the spur of the moment the appellant picked up the kitchen knife and stabbed his wife. Thus, counsel urges that exception 4 to Section 300 IPC is attracted and hence his act reveals the offence punishable under Section 304 Part I IPC.

25. We have noted hereinabove the injuries caused by the appellant on his wife. Indeed, the attack is savage and brutal. That apart, '*a sudden fight in the heat of a passion upon sudden quarrel*', the phrase used in exception 4 to Section 300 need to be highlighted by us.

26. Exception 4 to Section 300 IPC reads as under:-

*"Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner."*

27. The requirement of exception 4 is that upon a sudden quarrel, in the heat of the passion a sudden fight takes place. Fighting means a physical contact between two persons. Sudden fight means where the origin of who is the initiator of the physical contact is not ascertainable. Exception 4 does not come into operation merely upon there being a verbal quarrel,

with the victim not making any threatening gesture or indulging in a physical fight. Any other interpretation would make vulnerable virtually every second housewife in India. Statistical data show that notwithstanding advancement of education, wife beating continuous to be a norm in India with 50% of wives reporting violence at the hands of their husbands.

28. While looking to exception 4, the Court has to keep in mind the difference between a quarrel and a squabble. What is often described as a quarrel between husband and wife is no more than a husband or wife quibbling or squabbling.

29. From the testimony of Sanjay it is clear that his mother was not wanting to go back to Kerala as the family has just come to Delhi from Kerala and his mother did not want to face awkward questions from people back home who would want to know from her as to why she had returned to Kerala leaving the company of her husband so soon. Surely, this could not be a provocation of a kind which would result in a quarrel as is normally understood. At best, the non-agreement between the husband and wife, husband requiring the wife to return to Kerala and the wife refusing to do so, would be at best petty squabble between the husband and the wife.

30. We see no scope to alter the conviction of the appellant from Section 302 to Section 304 Part I IPC.

31. We find no merit in the appeal, which is dismissed.

32. The appellant is still in jail. Copy of this order be sent to Superintendent Central Jail, Tihar to be made available to the appellant.

**(PRADEEP NANDRAJOG)  
JUDGE**

**(SURESH KAIT)  
JUDGE**

**JANUARY 19, 2010  
mm/mr**