

R-51

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

% *Date of Decision: 2<sup>nd</sup> February, 2010*

+ **CRL. APPEAL NO.330/2005**

KISHAN SINGH ..... Appellant  
Through: Ms.Poornima Sethi, Advocate

versus

STATE ..... Respondent  
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.** (Oral)

1. Vide DD No.96-B at the midnight; time being 12:40 midnight of 15<sup>th</sup> and 16<sup>th</sup> March 2003, the duty constable at PS Gokul Puri noted that information was received through police control room that it was informed about a lady having committed suicide at Shiv Vihar, 33 Road Som Bazar, Near Chuna Bhatti.

2. ASI Darshan Kumar PW-10 along with Const.Ayaz

Khan PW-19 left for the spot and at the matrimonial house of the appellant and his wife found the dead body of the wife of the appellant lying between 2 cots, on the floor.

3. The dead body was seized and sent to the mortuary of GTB Hospital. Making an endorsement beneath the copy of the DD entry, FIR for offence of murder was got registered.

4. Returning back to the spot where the crime was committed, the crime team was summoned. SI Rohtash Kumar PW-11 from the crime team could not lift any chance fingerprints. Const.Rattan Singh PW-6 a photographer was summoned who took 8 photographs Ex.PW-6/1 to Ex.PW-6/8.

5. On 17<sup>th</sup> March 2003, Dr.Gaurav Vinod Jain PW-11, conducted the post-mortem on the dead body and noted ligature marks at the level of thyroid cartilage. The ligature marks were deep and prominent on the front and the left side of the neck. The marks got fainter on the right side and at the back. The overlying skin was found parchnented. Bruises were also found on the left side of laryngeal. Internal injury showed charring and blackening of esophyagus. The trachea contained blood. Stomach showed charring of walls, corrosion and perforation. Cause of death noted was asphyxia caused by ante mortem compression of neck by a ligature. It was opined that the corrosive poisoning would have also been

sufficient to cause the death which was due to asphyxia. The report Ex.PW-11/A was prepared.

6. Rajesh Kumar Sharma PW-7 informed the investigating officer that the appellant had come to his shop in a nervous condition in the midnight of 15<sup>th</sup> and 16<sup>th</sup> March 2003 and told him that his wife had hanged herself and that he gave said information to the police. His statement under Section 161 Cr.P.C. was recorded the same night.

7. The appellant was found missing and as per the arrest memo Ex.PW-14/4 was arrested on 17<sup>th</sup> March 2003. He made a disclosure statement Ex.PW-14/J to Insp.Sumer Singh PW-14 who took over the investigation after FIR was registered and pursuant thereto got a rope Ex.P-2 recovered which was seized as per memo Ex.PW-14/K, stating that he had strangulated his wife with the rope.

8. The rope Ex.P-2 was sent to Dr.Gaurav Jain for opinion, who vide report Ex.PW-11/B opined that the ligature marks on the neck of the deceased could be possible when she was strangulated with the rope Ex.P-2.

9. Needless to state, the appellant was charge-sheeted for the offence of having murdered his wife. The prosecution sought to nail his guilt by proving that the deceased was the wife of the appellant and the place where

she was murdered was the single room tenement in which the appellant and his wife resided and the appellant absconding after telling Rajesh Kumar Sharma PW-7 in the middle of the night that his wife had committed suicide. The recovery of the rope Ex.P-2 was also pressed in aid with reference to the opinion Ex.PW-11/B. Lastly, motive for the crime was sought to be established through the testimony of the brothers of the deceased.

10. It is apparent that the most incriminating evidence against the appellant would have been the testimony of Rajesh Kumar Sharma PW-7. But, he turned hostile. While deposing in Court he stated that at the midnight of 15<sup>th</sup> and 16<sup>th</sup> March 2003 some persons knocked at the door of his house and asked him to make a telephone call. They spoke to the police. On being declared hostile and cross-examined by the learned APP, Rajesh Kumar Sharma denied that the appellant had come to his shop in a nervous condition or that the appellant told him that his wife had hanged herself and that he spoke to the police. Confronted with his statement Ex.PW-7/A (portion A to A) where it was recorded that he had told the police that in the middle of the night the appellant came to his shop in a nervous condition and told him that his wife had hanged herself and at his asking he informed said fact to the police,

Rajesh Kumar Sharma denied having made any such statement.

11. Bir Singh PW-4 brother of the deceased threw light on the maltreatment of his sister at her matrimonial house. Siya Ram PW-5 another brother of the deceased corroborated Bir Singh. The police officers deposed about recovery of the dead body of the wife of the appellant from her matrimonial house in the intervening night of 15<sup>th</sup> and 16<sup>th</sup> March 2003 and that the appellant was absconding and was arrested in the evening of 17<sup>th</sup> March 2003.

12. Thus, the only incriminating evidence which could be proved at the trial against the appellant was:-

A. The deceased was the wife of the appellant and the place of the crime was the single room matrimonial house and there was no evidence of anyone breaking into the house.

B. The probable time of the crime was around 12:00 midnight, a time when a husband is expected to be in the matrimonial house.

C. Appellant absconding from his house and being apprehended in the late evening of 17<sup>th</sup> March 2003.

D. Lastly, recovery of a rope Ex.P-2 pursuant to the disclosure statement of the appellant and the opinion Ex.PW-11/B of Dr.Gaurav Vinod Jain PW-11, to whom the rope was

sent for opinion the opinion being that the ligature marks on the neck of the deceased could possibly be caused by the use of the rope Ex.P-2.

13. The defence of the appellant that he had spent the intervening night of 15<sup>th</sup> and 16<sup>th</sup> March 2003 in the house of his brother-in-law was rejected by the learned Trial Judge as the same was held to be an afterthought and with no reasons given as to why he spent the night in the house of his brother-in-law. We may note that the appellant has not examined his brother-in-law as a defence witness.

14. Learned counsel for the appellant concedes that the place where the deceased was killed happened to be her matrimonial house. Counsel further concedes that the deceased died around midnight of the intervening night of 15<sup>th</sup> and 16<sup>th</sup> March 2003 and that the post-mortem report conclusively establishes that either before strangulating her to death, acid was poured into the mouth of the deceased or that acid was poured down the gullet of the deceased after she was strangulated i.e. in any case it was a case of murder.

15. It is urged that from the said two facts and the fact of the appellant not being seen in his house at best can be treated as highly suspicious of the involvement of the appellant in the crime but cannot be said to attain the level

required of proof i.e. of a prudent person concluding qua the guilt of the appellant.

16. Learned counsel for the appellant has oversimplified the incriminating circumstances against the appellant. Let us list the same.

17. The incriminating circumstances are:-

(i) Proved through the testimony of the brothers of the deceased the fact that there was matrimonial discord between the appellant and his wife and hence the motive.

(ii) The likely time of death of the deceased is midnight, a time when husbands are normally expected to be in the house. The place of death is the matrimonial house.

(iii) There is no evidence of an outsider breaking into the house.

(iv) Appellant stating that he left and spent the night in the house of his brother-in-law, a fact not proved. Coupled with the fact that the appellant claims to have returned home in the evening of 16<sup>th</sup> March 2003. His conduct of not enquiring in the neighbourhood as to where his wife was. If he returned to his house as claimed by him, fellow residents in the neighbourhood would certainly have told him that the police has recovered the dead body of his wife the previous night and in said circumstance the natural conduct of the

appellant would be to go to the police station and find out as to what had happened. The appellant did not do so.

(v) Appellant absconding and being arrested in the evening of 17<sup>th</sup> March 2003.

(vi) Howsoever little may be the incriminating value of the recovery of the rope Ex.P-2 pursuant to the disclosure statement of the appellant, the same being the possible weapon of offence has also to be taken note of.

18. Read cumulatively, we see no escape from the conclusion that the appellant, proved to be having a motive for the crime and his conduct of absconding coupled with a false defence that after he spent the night in the house of his brother-in-law he returned to his house the next day, we are satisfied that the learned Trial Judge has arrived at a correct conclusion.

19. Before concluding we note that apathy for the girl child and the women in India is resulting in continued murder of wives in their matrimonial homes by their husbands. As in the instant case, where we find Rajesh Kumar Sharma PW-7 turning turtle, it has to be noted that neighbours are not coming forward to help the police.

20. Thus, where the offence pertains to the wife being the target and the place where the crime has been committed

is the matrimonial house and especially where the time of the crime is such that a husband is expected to be in the house, the conduct of the husband is the only substantial evidence left before the Court and said conduct would be determinative of the guilty mind of the husband.

21. The importance of the house not being broken into and the claim of the husband that he spent the night elsewhere has to be considered with reference to the normal conduct of a lady who has to sleep alone in her house. Surely, she would secure her safety by properly latching the door of her house so that no outsider can easily intrude into the house. If there is no evidence of a forcible entry into the house, it is obvious that somebody who had a friendly entry in the house, after committing the crime has run away. The explanation of the husband of alibi has to be carefully analyzed and as in the instant case if the husband claims to have returned the next day to his house but does not report to the police or enquire from his neighbours as to what has happened to his wife and simply walks away and is arrested the next day, such conduct is highly inculpatory of a guilty mind. It shows the attempt to flee from justice.

22. We find no merit in the appeal.

23. The appeal is dismissed.

24. Since the appellant is in jail, copy of this order be sent to the Superintendent, Central Jail, Tihar to be made available to the appellant.

**PRADEEP NANDRAJOG, J.**

**SURESH KAIT, J.**

**February 02, 2010  
mm**