

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

SUBJECT : INDIAN PENAL CODE

Date of Decision: 20th January, 2009

Crl. Appeal No. 580/2006

Bheema  
Through : Appellant  
Mr. Bhupesh Narula , Advocate

Versus

State  
Through : Respondent  
Ms. Richa Kapoor APP

CORAM:  
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG  
HON'BLE MS. JUSTICE ARUNA SURESH

PRADEEP NANDRAJOG, J. (Oral)

1. Criminal law was set into motion at 12:36 a.m. on 2.1.2004, when pursuant to a message received by HC Rajender Singh PW 10, entry in PCR form, Ex.PW-10/A, was recorded by him and transmitted to all PCR vans and PS Sangam Vihar. Pursuant to this message, DD Entry No.23A, Ex.PW-15/A was recorded at PS Sangam Vihar, New Delhi to the effect that two persons were lying soaked in blood on the road opposite KSK Public School. ASI Satish Chand PW-15, accompanied by Const. Devender Singh PW-3, reached the area which happened to be F-2/50 Gali No. 7 near Gill Farm Sangam Vihar.

There they learnt that two injured persons had been removed to AIIMS hospital. Thus, the two proceeded to AIIMS.

2. At the hospital they learnt that one out of the two injured viz. Bali Ram (deceased) was unfit for statement. The other, his wife Prem PW-2, was fit for statement and accordingly her statement Ex.PW-2/A was recorded by ASI Satish Chand PW 15, at 2:00 a.m. on the same day.

3. In her statement Smt. Prem, inter alia, named the accused as the assailant. She stated that the accused had been residing at her residence for five to six months prior to the incident. On 1.1.2004 the accused reached home at about 9.00 PM. The accused used to sleep in a room on the upper floor whereas the deceased used to sleep on the ground floor. At about 12.30 AM accused Bheema came to her room and with the handle of a hand pump, inflicted blows on her husband and thereafter on her hand. An alarm was raised which attracted the neighbours whereupon the accused fled from the spot. She also stated that she was earlier married to one Kishan and had six children from the wedlock, one of whom was the accused, Bheema. Subsequently she married Bali Ram Sharma about 22 years back.

4. ASI Satish Chand PW15, made an endorsement Ex.PW-15/C on the statement and handed over the same to Const. Devender PW3, for registration of a FIR. The FIR Ex.PW-6/A under Section 308 IPC was registered by HC Dhan Pal PW6, at 3:20 A.M on 2.1.2004 at PS Sangam Vihar.

5. ASI Satish Chand PW15 and Const. Devender Singh PW3 reached the site of the incident. ASI Satish Chand prepared a rough site plan, Ex.PW -15/D. Amongst others, a blood stained gudda lying on the cot was seized vide seizure memo Ex.PW-3/A, witness to the seizure was Const. Devender Singh. Gaurab PW 4, a photographer was summoned at the site at 7:30 a.m. 3 photographs of the site of the incident were taken, being Ex.P1 to P3; negatives whereof are Ex.P4 to P6.

6. At the hospital Prem was examined by Dr.Poonam Sehrawat who recorded the MLC Ex.PW-14/A and noted thereon a simple injury with a blunt object on the forehead and a deep lacerated wound on the left forearm with swelling of tendons on the body of Prem. Suspecting a fracture on the left hand of Prem, Dr.Poonam Sehrawat referred Prem to a radiologist whereupon Dr.Jyoti PW-5, after getting the left forearm of Prem X-rayed noted vide report Ex.PW-5/A that Prem had suffered a fracture of the left radial and left ulna. Dr.Poonam Sehrawat also examined Bali Ram and recorded MLC Ex.PW-14/B noting three injuries, on the forehead, lower limb and right side lower face on the body of Bali Ram.

7. Bali Ram succumbed to his injuries on 8.1.2004 At 2:45 a.m., Const. Vipin Kumar PW-8, duty constable at AIIMS informed Duty officer ASI Satbir Singh PW-11, about the death of the injured Bali Ram which was recorded vide DD Entry No. 30-A, Ex. PW11/A and the offence punishable under Section 302 was made a part of the FIR.

8. Acting upon this information, on 8.1.2004, IO SI Sanjeev Sodhi PW16, assisted by Const. Gurdeep Singh PW12, proceeded for the inquest proceedings. Post mortem of the deceased was conducted on the same day by Dr. Sunil Kumar PW1. Dr. Sudhir Gupta PW7, supervised the same. Following stands recorded in the post-mortem report, Ex.PW-1/A:- Rigor mortis present over the upper and lower limb. Post mortem staining present over the dependent parts. Eyes and mouth closed. No sign of decomposition. Swollen and black eye right side with subconjunctival haemorrhage. Ante mortem injuries 1. Stitched lacerated wound over right forehead just above the eyebrow, 2 cms right to midline measuring 6 cm in length, bone depth. 2. Stitched lacerated wound over right cheek obliquely placed measuring 8 cms in length, bone depth, with multiple fractures of maxilla. 3. Stitched lacerated wound over lower lip just right to mid line HEAD AND NECK:- Scalp- subscalp haemotoma over right frontal region. Skull- fracture of frontal bone right side underneath injury no. 1 Brain- Subdural and subarachnoid haemorrhage over right frontal and parietal lobe.

9. Opining on the cause of death, it was recorded that the same was coma due to head injury caused by blunt force that could be seen in the above mentioned circumstances, which was sufficient to cause death in the ordinary course of nature.

10. On 25.1.2004, secret information regarding whereabouts of the accused Bheema were received from an informer. Along with the secret informer, the police team, consisting of HC Rajender Singh PW-9, and SI Sanjeev Sodhi PW16, reached at Batra Bus Stand where the accused was apprehended and arrested. His personal search was conducted vide memo Ex.PW-9/A. The accused was interrogated and his disclosure statement was recorded vide memo Ex.PW-9/B in which the accused stated that he can get recovered the weapon of offence. Thereafter, the accused guided the police team to Gill Farms and pointed out the spot vide pointing out memo Ex.PW-9/D and got recovered the handle of a hand pump from a bush. The handle was seized vide memo Ex.PW-9/C.

11. Armed with the aforesaid material the accused was sent to trial and a charge under Section 302 IPC for murdering Bali Ram was framed against him and a charge under Section 308 IPC was framed for having inflicted injuries on Smt.Prem with intention or knowledge and under such circumstances that if death was caused by said act, the appellant would be guilty of culpable homicide not amount to murder.

12. At the trial, the police officers associated with the investigation proved the disclosure statement made by the appellant and recovery of the weapon of offence at his instance. The doctors associated at the contemporaneous time who recorded the MLCs and conducted the post-mortem were examined, save and except Dr.Poonam Sehrawat who had prepared the MLCs Ex.PW- 14/A and Ex.PW-14/B which were proved by Dr.Shalini Girdhar PW-14, who had worked with Dr.Poonam Sehrawat and identified the handwriting and signatures of Dr.Poonam Sehrawat. Various documents which were exhibited, reference whereof has been made herein above while narrating how the investigation proceeded were proved. The solitary eye-witness, Prem PW-2, deposed the facts which she had stated and as recorded in Ex.PW-2/A. No infirmity, contradiction or

improvement was brought out by the defence in the testimony of PW-2. Indeed, during arguments, learned counsel for the appellant could not point out any fallacy in the deposition of PW-2. Learned counsel urged that PW-2 was lying. It was not elaborated as to what were the circumstances wherefrom we could gather that Prem was lying.

13. In the statement of the accused recorded under Section 313 Cr.P.C., he denied any involvement in the crime and stated that he had been falsely implicated.

14. The appellant examined 3 witnesses in defence to prove that at the time of the occurrence he was at his village. The said witnesses Ram Bhagat DW-1, Lakhmi DW-2 and Ram Kumar DW-3, all deposed that the accused was a resident of village Papparana, Tehsil Hasan, Distt. Karnal, Haryana. All deposed that Prem had left her husband Kishan around 25 years ago and without marrying ran away with a man. All deposed that the accused was picked up by the police of Delhi from the village.

15. Believing Prem, the learned Trial Judge convicted the appellant for the offence punishable under Section 302 IPC for the murder of deceased Bali Ram Sharma and under Section 325 IPC for causing grievous hurt on the person of Smt. Prem.

16. Arguing the appeal, learned counsel for the appellant submitted that no public witnesses being associated in the stated recovery of the weapon of offence, the recovery was doubtful; the possibility of the same being planted on the appellant cannot be ruled out. Learned counsel urged that there was no motive and hence it was difficult to believe that the appellant inflicted the injuries on Bali Ram and his wife. Lastly, it is urged that at best it was a case of culpable homicide not amounting to murder and punishable under Section 304 Part-II.

17. Merely because a public witness is not associated at the time of investigation does not mean that the police personnel cannot be relied upon. In the decision reported as 1985 (3) SCC 45 State of Gujarat vs. Raghu Nath Vaman Rao Baxi it was observed:- It does not mean that their evidence should be viewed with suspicion because they are

government servants or because they are generally associated with investigating agencies whenever there is a crime in the village For that matter it would be wrong to reject the evidence of police officer either on the mere ground that they are interested in the success of the prosecution.

18. The second plea is also without any substance for the reason that sometimes it becomes difficult for the prosecution to ascertain motive. In the instant case the motive appears to be the fact that Prem and the deceased did not have any children; a fact which presumably was in the knowledge of the appellant. The possibility of his thinking that after killing the two he could usurp their property cannot be ruled out. After all, the appellant was residing in the house for the last 5 to 6 months; he was the son of Prem born to her from her previous marriage and hence people in the locality would naturally believe that the appellant is the son of Prem and the deceased.

19. The matter can be viewed from another angle. Why would Prem falsely implicate her son The motive suggested to Prem that she was deposing falsely because by implicating the appellant she could lay claim to the properties of her first husband is too far-fetched and in fact is frivolous. By getting rid of the appellant, Prem could not succeed to the properties of her first husband until the five other children born to her were also removed from the scene and that too, if the suggestion to her that she was living with the deceased without any marriage, was correct for only then could Prem be treated as the wife of Kishan.

20. It would not be out of place to note that Prem and her husband suffered the injuries at around 11.45 PM on 1.1.2004 Evidenced by the MLC Ex.PW-14/A and Ex.PW-14/B they were admitted at AIIMS at 1.00 AM on 2.1.2004 The police recorded the statement Ex.PW-2/A of Prem before 2.45 AM on 2.1.2004 evidenced by the fact that the tehrir Ex.15/C was forwarded along with the statement Ex.PW-2/A for registration of the FIR, as recorded in Ex.PW-15/C, at 2.45 AM. Let us visualize the mental condition of Prem. Her husband was unconscious and grievously injured. Obviously, she was in a state of trauma. Her husband was fighting between life and death. Even she was assaulted and

was shuttling between various departments of the hospital where, after the clinical examination she was referred to the radiologist for an X-ray and thereafter to an orthopedic doctor. Would she be more concerned about the welfare of her husband and herself or would she be contriving to create a false story to be told to the police as to who assaulted her husband and herself. It has come in evidence, even defence witnesses have so spoken, that Prem left her previous husband about 25 years back and never returned to the village. She had left behind her six children. For 25 years she had no contact with them. It is difficult to presume that Prem would take a decision to falsely implicate the appellant for no rhyme or reason. She had no time to think as to whom should she falsely implicate. She had no reason to falsely implicate the appellant. That apart, the testimony of the defence witnesses pertaining to the appellant being in the village and being falsely arrested cannot be accepted because Ram Bhagat DW-1, as stated by him is the Lambardar of the village. If a boy from his village was falsely arrested, he would certainly have raised the issue with the higher authorities. At least, the local police would have been contacted about the fact of the appellant being lifted by the Delhi Police from the village. It would not be out of place to note here that the defence witnesses have stated that villagers had gathered at the spot when Delhi Police officials arrested him in the village and told the police that the appellant was being illegally apprehended in a false case.

21. The last plea urged merits a deeper consideration.

22. Do the facts establish, as held by the learned Trial Judge, that the appellant had intended to cause the death of Bali Ram. According to the learned Trial Judge the intention is evidenced by the fact that the appellant had assaulted Bali Ram on the head which is a vital part of the body. It has been observed that the handle of a hand-pump can form a lethal weapon of offence if directed towards a vital part of the body i.e. the head.

23. The learned Trial Judge has been influenced by the opinion of the doctors who conducted the post-mortem that injury No.1 over the right forehead just above the eye-

brows, 2 cm right to mid-line measuring 6 cm in length, bone deep, was sufficient in the ordinary course of nature to cause death.

24. The intention of a person accused of a crime of homicide has to be gathered from his acts. Whether the attack was pre-meditated; whether the weapon of offence is a dangerous weapon by its very nature; the ferocity of the attack; the body part towards which the attack is directed; the motive of the assailant and the circumstances under which the injuries were inflicted are all relevant and have to be considered while evaluating the evidence and the circumstances.

25. It is true that Bali Ram died after 6 days of hospitalization, but what weighs with us is the fact that all three injuries have been directed towards the head of Bali Ram. The first two injuries show the length being 6 cm and 8 cm evidencing that the handle of the hand-pump was used with an attempt to clobber Bali Ram. The first injury is bone deep and is on the forehead. The second over the right cheek having length of 8 cm is also bone deep causing multiple fractures of maxilla. The third injury is also directed towards the upper part of the face and is on the lower lip. Pertaining to injury No.1, the frontal bone has been fractured. The brain has suffered subdural and subarachnoid haemorrhage. It is difficult to hold that the person who inflicted said injuries did not intend to cause death of Bali Ram. In any case, the intention to cause injuries on the head is clear. The nature of injuries show the ferocity of the blows with which the handle of the hand-pump was hit on the deceased. The opinion of the doctor has to be kept in mind. In any case, the injuries do fall in the category of being of a nature sufficient in the ordinary course of nature to cause death. If not that, the act is so imminently dangerous that it must, in all probability, cause death or such bodily injury as are likely to cause death. It would not be out of place to note that as per the testimony of Prem PW-2, it stands established that when the attack was launched she and her husband were asleep; the time was 11.45 in the night from which a reasonable inference can be drawn that the appellant chose the moment of strike when the victims, being in slumber, were an easy target and could not react to ward off the attack as a conscious person would do. Bali Ram was an old man. The same assault may be fatal if directed towards an old man; it may not be fatal if



directed against a young man. Thus, the age of the victim has also to be kept in mind while appreciating the nature of the assault.

26. We find no merit in the appeal. The same is dismissed.

Sd./-  
PRADEEP NANDRAJOG, J.

Sd./-  
ARUNA SURESH, J.

JANUARY 20, 2009