

**Sanjay @ Vicky Vs. State**

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**Court :** Delhi

**Decided On :** Nov-24-2014

**Judge :** Mukta Gupta

**Appellant :** Sanjay @ Vicky

**Respondent :** State

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on: November 20, 2014 Judgment Delivered on: November 24, 2014 % + CRL.A. 1151/2010 SANJAY @ VICKY Represented by: ..... Appellant Mr.Anurag Jain, Mr.Vivek Sood, Ms.Janhavi Mahana and Mr.Jaydeep Tandon, Advocates. Appellant produced from custody. versus STATE Represented by: ..... Respondent Mr.Varun Goswami, APP for the State with Inspector Dheeraj Singh, PS Mayur Vihar. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

1. Sanjay @ Vicky is convicted for the murder of his wife vide the impugned judgment dated August 18, 2010 and directed to undergo imprisonment for life and to pay a fine of `20,000/- vide the impugned order dated August 27, 2010.

2. Learned counsel for the appellant assailing the judgment contends that the testimony of PW-2 Smt.Sudama is not sufficient to convict the appellant as according to her she had seen the appellant along with the deceased at 11.00 PM

on October 06, 2008 and the dead body was recovered in the morning on October 10, 2008. Thus the time gap between last seen and the recovery of the dead body being too much, her having seen the appellant with the deceased on October 06, 2008 does not make her a witness who had lastly seen the two together soon before the incident. The questions under Section 313 Cr.P.C. have not been properly put. The plea of absconsion and false defence in the explanation under Section 313 Cr.P.C. cannot be used against the appellant. The chain of circumstantial evidence not being complete, the appellant cannot be convicted for the murder of his wife. The appellant has stated that he was not in Delhi at the relevant time however his defence has not been looked into. Reliance is placed on the decisions reported as (2004) 11 SCC282Dasari Siva Prasad Reddy Vs. Public Prosecutor, High Court of A.P. and (1998) 4 SCC336State of U.P. Vs. Lakhmi.

3. The defence of Sanjay in his statement under Section 313 Cr.P.C. is as under:

I am innocent and falsely implicated in this case. In the evening of 5th October 2008 I had gone to Kela Devi temple at Rajasthan leaving Sangeeta at her home at Trilok Puri 34/459 by bus from Sarai Kalyen Khan. Thereafter, after staying for 5/6 days, I had left the Kela Devi Temple for Haridwar for twelve days in Dharamsala at Rishikesh road. On 22.2.2008 I had called Dhvani Kumar on his phone from Haridwar. After hearing I shocked. Thereafter, I had shifted to Tulianand Dharamsala at Haridwar. There I stayed for three days and vacated the same because I had no money and I had wondered on the road. I could not decide what I had to do. However, I had decided on 3rd November 2008 that I had to surrender.

4. Process of law was set into motion by Suresh Kumar PW-1 father of deceased Sangeeta who received a phone call on October 10, 2008 through a person informing that bad smell was coming out of room of Sanjay. On receipt of the information at his shop he reached the house of Sanjay where the lock was found broken and bad smell was coming. He along with neighbours entered the room and found dead body of Sangeeta in the box of bed. He identified Sangeeta from her clothes, rings etc. Before his reaching the spot, Police had been and media had also been informed. DD No.57B was recorded in this regard at PS Mayur

Vihar pursuant to which ASI Anwar Khan, SHO and other Police officials came at the spot.

5. Statement of Suresh Kumar was recorded by ASI Anwar Khan who deposed that he had married his daughter Sangeeta with Sanjay on November 21, 2007. The parents-in-law of Sangeeta and Sanjay used to harass and beat his daughter on account of demand of dowry. On the day of Rakshabandhan Sanjay demanded `2 lakhs from him in the presence of Sangeeta and told that if the same was not fulfilled he would kill Sangeeta. Sangeeta lived with them for 3-4 days and thereafter came back with Sanjay. Sanjay took one room on rent at Trilokpuri leaving the room at Anand Parvat after one and a half month. Nothing happened during the shifting of the house at Trilokpuri, however on October 10, 2008 he received a phone call with regard to foul smell. When he came he found the lock broken and bad smell was coming. Sangeetas face was badly burnt and both her wrists were cut.

6. The post-mortem of Sangeeta was conducted by Dr.Vinay Kumar Singh PW-11 who authored the report Ex.PW-11/A. He noticed the following external injuries:

1. Incised wound, of 8 x 3 cms, present over middle front of neck extending to left side place 7 cm below chin and 8 cm below left ear, margins were sharp and regular, horizontally placed and both ends were acute, trachea, vessels and muscles all were incised.

2. Incised wound of 5 x 3 cms, horizontally placed over right wrist, 2 cm above joint, margins sharp and regular, both ends were acute, all superficial vessels, muscles and tendons and radial artery was incised.

3. Incised wound of 5 x 3 cms, margins sharp and regular, horizontally placed over front of left wrist joint 1.5 cm above, both ends were acute, all superficial muscles, vessels, tendons and radial artery were incised.

7. Since the stomach contained 50 ml of reddish brown fluid the viscera was sent for chemical analysis. After the receipt of the FSL report, opining that metallic poisons, ethyl and methyl alcohol, cyanide, phosphide, alkaloids, barbiturates,

tranquilizers and pesticide could not be detected, Dr.Vinay Kumar Singh gave his subsequent opinion Ex.PW-11/B opining that the cause of death was due to shock and haemorrhage consequent upon cut-throat injuries and incised injuries No.1, 2 and 3. All the injuries were ante-mortem in nature and caused by sharp-edged weapon/ instruments. Injuries No.1, 2 and 3 were sufficient to cause death in the ordinary course of nature, homicidal death. Upon the appellants arrest shaving blade was recovered at his instance and on seeing the shaving blade Dr.Vinay Kumar Singh vide his opinion Ex.PW-11/C opined that the injuries No.1,2&3 on the body of the deceased could be caused by the said weapon examined or some similar weapon.

8. PW-2 Smt.Sudamas statement was recorded who was living as a tenant in the same house on the second floor who stated that she was on visiting terms with Sangeeta and used to visit her at her ground floor room. On October 06, 2008 she had gone to the room of Sangeeta at about 9.00 PM and stayed there for about 2 hours and was talking to her. At about 11.00 PM her husband came and thereafter she left Sangeeta in the room with her husband. On the next morning at about 9/10 AM she came down and saw that the room of Sangeeta was locked. She thought that both might have gone somewhere. After about 4-5 days bad smell was emanating from the room of Sangeeta and the neighbours as well as the landlord came and the lock was broken and dead body was found in the bed box lying in the room.

9. All this while Sanjay was not available and thus search was made for Sanjay. On November 04, 2008 on receipt of a secret information regarding presence of Sanjay at the house of his relative at Dev Nagar, a raid was conducted and Sanjay was apprehended at the road near Gurudwara at Dev Nagar. He was carrying a black colour bag in which one key which was used for locking of the house where the dead body was found was recovered which was seized and sealed vide memo Ex.PW-9/A. On search of his bag 18 torn pages of a diary were recovered. Further from the said bag one receipt relating to Shri 1008, Swami Turianand Satsang Seva Ashram, Rishikesh Road Bhupatwala, Haridwar of `150/-, dated October 18, 2008 written in favour of Sanjay was recovered. On the back side of the receipt a suicide note in two parts was found written which was also seized vide memo

Ex.PW-9/C. The material witnesses have deposed in sync with their statements made before the Police officer as noted above.

10. The learned Trial Court considering the last seen evidence, the absconsion of Sanjay from the house till November 04, 2008, recovery of key from the bag of Sanjay and in view of the opinion of the hand-writing expert that the hand-writing on 18 torn pages and the receipt was found to be similar to that of Sanjay and that Sanjay has not displaced the burden to prove his innocence, convicted Sanjay for offence punishable under Section 302 IPC.

11. The recovery of the key from the appellant Sanjay is of no avail to the prosecution as there is no evidence on record to show that the lock on the room where the dead body of Sangeeta was found could be opened by the said key. As a matter of fact on foul smell coming the lock of the room was broken open by the neighbours and the landlord, whereafter a call was made to the police and the father of the deceased.

12. A perusal of the pages of the diary and the note written on the receipt relating to 1008 Swami Turiyanand Satsang Sewashram, Rishikesh Road, Bhupatwala, Haridwar of `150/- dated October 18, 2008 in favour of Sanjay is also of no avail to the prosecution as despite incriminating facts being noted on the backside of the said receipt and the pages recovered for the reason that the specimen handwriting of Sanjay was not taken with the permission of the Magistrate in view of the decision reported as 1997 (10) SCC44Mohd.Aman, Babu Khan and another vs. State of Rajasthan and the Full Bench decision of this Court in 191 (2012) DLT225(FB) Sapan Haldar and another vs. State. Thus this evidence also cannot be said to be incriminating against Sanjay.

13. However, we are unable to agree with the contention of learned counsel for the appellant that the last seen evidence of PW-2 Smt.Sudama is also of no avail to the prosecution because of the gap of time. Smt.Sudama as noted above has deposed that she went to the room of Sangeeta on the night of October 06, 2008 at about 9.00 PM and sat there for about two hours when at about 11.00 PM her husband came whereafter she left Sangeeta and her husband in their room. In the next morning at about 9.0010.00 AM when she came down she saw the room of

Sangeeta was locked. The room continued to be locked for four-five days when foul smell was found emanating from the room of Sangeeta on October 10, 2008 and an information in this regard was given to the landlord whereafter the lock was broken open. Further as per the post-mortem report Ex.PW-11/A the postmortem was conducted on October 11, 2009 at about 1.30 PM and the time since death was three to five days which probablise that the incident took place in the intervening night of October 6th/7th, 2008 whereafter neither Sangeeta nor Sanjay were seen and the room was found locked. In fact Smt.Sudama has not been cross-examined on behalf of the accused despite opportunity and thus her testimony has gone unchallenged.

14. The prosecution has also been able to prove that after the incident Sanjay was not available at his residence and he was arrested only on November 04, 2008 from near the Gurudwara at Dev Nagar. The plea of Sanjay is that in the evening of October 05, 2008 he had gone to Kela Devi Temple at Rajasthan and thereafter to Haridwar for 12 days. He made a call to Dhvani Kumar on October 22, 2008 when he came to know about the news, he was shocked and he shifted to Tulianand Dharamshala at Haridwar. The explanation is unsupported by evidence except that the prosecution had recovered a receipt dated October 18, 2008 from the bag of the appellant which nowhere suggests that Sanjay had reached Rajasthan on October 5th or 6th, 2008. The conduct of Sanjay in not coming to Delhi even on knowing about the death of his wife speaks of his guilty mind and is thus required to be used as incriminating evidence against him. Thus, the prosecution has also proved that Sanjay absconded after the incident and thus was not seen even by the neighbours.

15. Pursuant to his arrest, Sanjay led the police party and got recovered a shaving blood from the ventilator where exhaust fan was fitted vide Ex.PW22/B. The said weapon of offence has been connected to the crime committed even in the absence of the same being blood stained by the subsequent opinion of the post-mortem doctor Ex.PW-11/C, who opined that the injuries were possible by the said weapon.

16. Thus from the evidence produced by the prosecution it is evident that the appellant has taken a false plea in his statement under Section 313 Cr.P.C though the same cannot be the sole basis for conviction however, it can be used as an additional link in the chain of circumstances as held by the Supreme Court in (1984) 4 SCC116 Sharad Birdhichand Sarda vs. State of Maharashtra:

159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier viz. before a false explanation can be used as additional link, the following essential conditions must be satisfied: (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved, (2) the said circumstance points to the guilt of the accused with reasonable definiteness, and (3) the circumstance is in proximity to the time and situation.

160. If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was examined in Shankarlal case [(1981) 2 SCC35 39 :

1981. SCC (Cri) 315, 318-19 : (1981) 2 SCR384 390 :

1981. Cri LJ325 where this Court observed thus: [SCC para 30, p. 43: SCC (Cri) p. 322]. Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstances, if other circumstances point unflinchingly to the guilt of the accused.

17. Following the decision of Sharad Birdhichand Sarda (supra) the Supreme Court in the decision of 2002 (1) SCC702 Subhash Chand vs. State of Rajasthan held that a false explanation or false plea taken by the accused can be used as an additional link in the chain of circumstantial evidence subject to satisfaction of three essential conditions, namely (i) various links in the chain of evidence led by the prosecution have been satisfactorily proved, (ii) the said circumstance points to

the guilt of the accused with reasonable definiteness, and (iii) the circumstance is in proximity to the time and situation.

18. Sangeeta died a homicidal death in her matrimonial home at a time when her husband was present. This Court in CrI.A.No.1397/2010 Bhupender @ Kale vs. State culling out the decisions of the Supreme Court on the death of the wife in matrimonial house classified them into four broad categories and noted:

I. In the first category fall the decisions where it is proved by the prosecution that the husband was present in the house when the wife suffered a homicidal death and rendered no explanation as to how his wife suffered the homicidal death. (See the decisions reported as State of Rajasthan v. Parthu MANU/SC/7953/2007: (2007) 12 SCC754 Amarsingh Munnasingh Suryavanshi v. State of Maharashtra MANU/SC/7979/2007: AIR 2008 SC479 Ganeshlal v. State of Maharashtra MANU/SC/0506/1992: (1992) 3 SCC106 Prabhudayal v. State of Maharashtra MANU/SC/0330/1993:(1993) 3 SCC573 Dynaneshwar v. State of Maharashtra MANU/SC/7264/2007:(2007) 10 SCC445 Trimukh Maroti Kirkan v. State of Maharashtra MANU/SC/8543/2006: (2006) 10 SCC681 Bija v. State of Haryana MANU/SC/7052/2008:(2008) 11 SCC242and State of Tamil Nadu v. Rajendran MANU/SC/0606/1999: (1999) 8 SCC679. II. In the second category are the decisions where the prosecution could not prove the presence of the husband in the house when the wife suffered a homicidal death but the circumstances were such that it could be reasonably inferred that the husband was in the house and the husband failed to render any satisfactory explanation as to how his wife suffered a homicidal death. The circumstances wherefrom it could be inferred that the husband was in the house would be proof that they lived in the house and used to cohabit there and the death took place in such hours of the night when a husband was expected to be in the house i.e. the hours between night time and early morning. (See the decisions reported as State of UP v. Dr. Ravindra Prakash Mittal MANU/SC/0402/1992: (1992) 3 SCC300and Narendra v. State of Karnataka MANU/SC/0736/2009: (2009) 6 SCC61. III. In the third category would be proof of a very strong motive for the husband to murder his wife and proof of there being a reasonable probability of the husband being in the house and having an opportunity to commit the murder. In the decision reported as Udaipal Singh v.

State of UP MANU/SC/0206/1971: (1972) 4 SCC142 the deceased wife died in her matrimonial home in a room where she and her husband used to reside together. The accused-husband had a very strong motive to murder the deceased which was evident from the letter written by him to his mistress, which letter clearly brought out the feeling of disgust which the accused had towards the deceased. The accused had the opportunity to commit the murder of the deceased as there was evidence to show the presence of the accused in the village where the house in which the deceased died was situated at the time of the death of the deceased. Noting the facts that the accused had a strong enough motive and an opportunity to murder the deceased, noting that there was no evidence that the appellant was seen in his house by anybody, the Supreme Court convicted the accused. IV. In the fourth category are the decisions where the wife died in her matrimonial house but there was no evidence to show presence of the husband in the house at the time of the death of the wife and the time when the crime was committed was not of the kind contemplated by the decisions in category II and was of a kind when husbands are expected to be on their job and there was either no proof of motive or very weak motive being proved as in the decision reported as Khatri Hemraj Amulakh v. State of Gujarat MANU/SC/0156/1972: AIR 1972 SC922 and State of Punjab Vs. Hari Kishan 1997 SCC Cri. 1211.

19. Presence of Sanjay in the matrimonial home in the intervening night of October 6th and 7th, 2008 is proved beyond reasonable doubt and thus the onus shifts under Section 106 of the Evidence Act on Sanjay to explain how Sangeeta died a homicidal death which he miserably failed to explain. The reliance of learned counsel for the appellant on the decision in Dasari Siva Prasad Reddy (supra) is misconceived. In the said decision, the trial court had categorically observed that the incident did not occur during the intervening night of April 19th and 20th, 1996, accused had no motive to kill his wife, version of PW-3 therein relating to last seen evidence was doubtful and the circumstance of abscondance could not be used against the accused as he did not abscond initially but when the people gathered. The Supreme Court held that on the evidence both views were possible and thus it could not be said that the view taken by the trial Court was not a plausible view.

20. Further the decision relied in case of Lakhmi (supra) is also not applicable to the facts of the present case as the Court therein was dealing with a case of alternative defence and it was held that though the burden of proof as per the Exception is on the accused but the mere fact that the accused adopted another alternative defence during his examination under Section 313 Cr.PC without referring to Exception to Section 300 IPC it was not enough to deny him the benefit of the Exception. In the present case, no defence evidence has been led by the appellant, material witness Smt. Sudama who has last seen Sanjay in the company of Sangeeta was not even cross-examined despite opportunity, the conduct of absconsion, recovery of weapon of offence stand proved beyond reasonable doubt against Sanjay and the explanation of the appellant rendered in his statement under Section 313 Cr.PC as noted above, does not prove even by preponderance of probability that he was not present in his matrimonial home on the intervening night of October 6th and 7th, 2008.

21. Consequently, we uphold the judgment of conviction and order on sentence.

22. The appeal is dismissed. The appellant will suffer the remaining sentenced.

23. T.C.R. be returned.

24. Two copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other to be handed over to the appellant. (MUKTA GUPTA) JUDGE (PRADEEP NANDRAJOG) JUDGE NOVEMBER24 2014 ga/vn

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