

**Ram @ Ram Dass Vs State of Delhi**

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**Court :** Delhi

**Decided On :** Jul-26-2010

**Judge :** Mr. Badar Durrez Ahdmed ; Mr. V.K. Jain. J J

**Acts :** Indian Penal Code (IPC) - Sections 302 ; Code Of Criminal Procedure (Cr.Pc) - Sections 313

**Appeal No. :** Cri.A.917/2009

**Appellant :** Ram @ Ram Dass

**Respondent :** State of Delhi

**Advocate for Def. :** Mr Pawan Sharma, Adv.

**Advocate for Pet/Ap. :** Mr. K.B.Andley, Senior ; Mr.M.L.Yadav, Adv.

**Judgement :**

1. Whether 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 Digest? Yes

**ORDER**

1. This appeal is directed against the judgment dated 28.10.2009 and Order on Sentence dated 5.11.2009, whereby the appellant was convicted under Section

302 of IPC and was sentenced to undergo imprisonment for life and to pay fine of Rs.20,000/- or to undergo RI for one year in default.

2. The case of the prosecution, as disclosed in the FIR registered at the statement of Shyam @ Sudama, brother of the appellant, is that on 12th March, 2008 at about 7.45 pm, he went to the house of the appellant at RZS-160 (near 50' wide Road), Nihal Vihar, to discuss a financial matter. When he reached the house of the appellant, he found him holding a knife in his right hand and telling his wife deceased Guddo that he was aware of her affair and he would finished her that day. The appellant, according to the informant, then gave a number of knife blows to deceased Guddo saying simultaneously that he would kill her. On account of the knife injuries sustained by her, the deceased fell down in the street. When the informant tried to save her, the appellant asked him to move away and also threatened to kill him in case he did not do so. The appellant then ran away holding the knife in his hand. The informant informed Police Control Room and the police took the deceased Guddo to hospital. It is also the case of the prosecution that the appellant was arrested near a drain in Paschim Vihar at about 6.00 pm on 13th March, 2008 and while in police custody, he got recovered a bloodstained knife from a vacant plot near his house, where it was lying under pieces of stones and bricks. The clothes and slippers which the appellant was wearing at the time of his arrest were also found to have bloodstains.

3. Besides ocular evidence in the form of statements given by the informant Shyam @ Sudama and PW-4 Smt.Rajesh, the case of the prosecution against the appellant was also based upon the following circumstantial evidence:

(i) The appellant was found absconding from his house after the murder of his wife.

(ii) While in police custody, the appellant disclosed that a knife had been thrown by him in a plot near his house and the appellant led the police party to that plot and took out a knife from beneath the pieces bricks and stones lying in that plot.

(iii) The clothes and a slipper which the appellant was wearing at the time of his arrest were found to be stained with human blood. Ocular Evidence

4. The informant Shyam @ Sudama, who is the brother of the appellant came in the witness box as PW-1 but did not support the prosecution and stated that he had no knowledge about this case and was taken to the police post from his house where the appellant was also present. Next day, he along with the appellant was taken to Police Station Nangloi where his signatures were obtained on already written documents and he was allowed to leave the police station, whereas the appellant was made to stay there. He admitted his signature on his statement Ex.PW-1/A but claimed no knowledge about the person who stabbed deceased Guddo. He, however, offered no reason for signing the statement Ex.PW-1/A, on the basis of which the formal FIR was registered.

5. Smt.Rajesh, who came in the witness box as PW-4 also did not support the prosecution. Though she admitted that she had informed the police from the telephone installed at her house, she denied having seen the appellant stabbing his wife and then running away from the spot along with a knife. She claimed that she had seen a crowd gathered in the street and someone had asked her to inform the Police Control Room. Circumstance Nos.(ii) & (iii)

6. PW-7, Ct.Surender stated that on 13th March, 2008 when he was on patrol along with Inspector Rajender Singh Malik and Ct.Sribhagwan, they saw the appellant Ram Dass coming from the opposite direction. He recognized the appellant and apprehended him. When he was interrogated, the appellant disclosed that he had thrown the knife in the plot near his house. The appellant then led the police party to a plot and took out an open knife from under the bricks lying in the plot. He further stated that bloodstains were found on the left slipper which the appellant was wearing and, therefore, the slipper was seized. Bloodstains were also found on the T-shirt and Pyjama, which the appellant was wearing and those clothes were also seized.

7. PW-20 Insp.Rajender Singh Malik is the Investigating Officer of the case. He has corroborated the deposition of PW- 12 Ct.Sribhagwan regarding seizure of the slipper and clothes of the appellant and recovery of a bloodstained knife at his instance.

8. We see no reason to disbelieve the testimony of PW-7 Ct.Surender and PW-20 Insp.Rajender Malik regarding the disclosure statement made by the appellant while in police custody, production of the knife Ex.P-1 by him from under stone and brick pieces lying in the plot near his house and seizure of bloodstained clothes from him. The appellant does not claim any enmity or ill-will between him and either of these two witnesses. The testimonies of these witnesses could not be assailed during cross-examination and no material discrepancy in their testimonies has been brought to our notice. Their testimonies cannot be rejected merely because they happen to be police officers. As observed by the Hon'ble Supreme Court in Tahir v. State : (1996) 3 SCC 338, no infirmity attaches to the testimony of police officials merely because they belong to the police force. It was observed in Aner Raja Khima v. The State of Saurashtra : AIR 1956 SC 217 that the presumption that a person acts honestly and legally applies as much in favour of police officers as of others. It is not proper and permissible to doubt the evidence of police officers. Judicial approach must not be to distrust and suspect their evidence on oath without good and sufficient ground thereof.

9. It is true that no public witness was joined in the police party before the bloodstained knife was recovered. We can't be oblivious to the reluctance of a common man to join such raiding parties organized by the police, lest they are compelled to attend Police Station and Courts umpteen times at the cost of considerable inconvenience to them, without any commensurate benefit. Hence, no adverse inference on account of non-joining of public witnesses in such raids can be drawn in the instant case. Since the knife was found lying under pieces of bricks and stones, it cannot be said that it was found at a place which was visible to every passerby. In State of NCT of Delhi v. Sunil & Another : 2000 VIII AD (SC) 613, a plea was taken that there was no independent witness of the recovery made by the police pursuant to the statement of the accused while in police custody. The following observations made by the Hon'ble Supreme Court in this regard are pertinent:

"Hence, it is a fallacious impression that when recovery is effected pursuant to any statement made by the accused the document prepared by the Investigating Officer contemporaneous with such recovery must necessarily be attested by

independent witness. Of course, if any such statement leads to recovery of any article it is open to the Investigating Officer to take the signatures of any person present at that time, on the document prepared for such recovery. But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The court has to consider the evidence of the Investigating Officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth."

In *State of Maharashtra v. Suresh* : 1999 X AD (SC) 29, the accused made a disclosure statement that dead body was kept concealed in the fields and he would take out and produce the same. The following observations made by the Hon'ble Supreme Court regarding the implication of such a statement are relevant:

"We too countenance three possibilities when an accused points out the place where a dead body or an incriminating material was concealed without stating that it was concealed by himself. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there. But, if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities the criminal court can presume that it was concealed by the accused himself. This is because accused is the only person who can offer the explanation as to how else he came to know of such concealment and if he chooses to refrain from telling the court as to how else he came to know of it, the presumption is a well justified course to be adopted by the criminal court that the concealment was made by himself. Such an interpretation is not inconsistent with the principle embodied in Section 27 of the Evidence Act."

Therefore, in this case also there are three possibilities. The first possibility is that the appellant himself had kept the bloodstained knife under the pieces of bricks and stones. The second possibility is that someone had told him that the knife had been kept there and the third possibility is that the appellant had seen someone

keeping the knife at that place. The appellant has not told the court as to how he came to know that the knife Ex.P-1 was lying under the pieces of bricks and stones from where it was produced by him. The plea taken by him is that he did not at all take the police to that plot and did not produce any knife from there. Therefore, it can be safely presumed that it was the appellant himself who had kept the knife Ex.P-1 at the place from where it was produced by him and, therefore, he had come into possession of this knife before it was produced by him.

10. PW-13 Dr.Vinay Kumar who examined deceased Guddo when she was taken to Sanjay Gandhi Memorial Hospital, found the following injuries on her person: "

1. Fresh incised punctured wound of approx. 2 cm X .5 cm X 8 over medial aspect of left thigh

2. Fresh incised punctured wound of approx. 3 cm X .5 cm X 8 over medial aspect of right thigh

3. Fresh incised punctured wound of approx. 2 cm X .5 cm over right arterial aspect of chest

4. Fresh incised wound of approx. 1 cm X .5 cm X 4 cm over left superior iliac spine."

PW-14 Dr.Manoj Dhingra conducted the post mortem examination on the dead body of the deceased and opined that cause of her death was hemorrhagic shock as a result of laceration of liver. He also stated that on 14th March, 2008, the knife Ex.P-1 was brought to him in a sealed parcel and he took out the knife, drew its sketch and gave the opinion Ex.PW-14/A to the effect that the injuries to the deceased could have been caused by that knife or some other knife similar to that knife.

11. A perusal of the report of FSL shows that human blood was found on the knife which the appellant had produced from under the stone and brick pieces, as also on the shirt, lower and a slipper which he was wearing at the time of his arrest. As noted earlier, it has been opined by PW-14 Dr.Manoj Dhingra that the injuries

found on the person of the deceased could have been caused by the knife Ex.P-1. These circumstances, therefore, stand duly established during trial. Circumstance No.(i)

12. The deposition of PW-7 Ct.Surender and PW-20 Insp.Rajender Malik shows that the appellant was apprehended on 50' wide road in Nihal Vihar on 13th March, 2008. The appellant has produced some witnesses in his defence to prove that, in fact, he was not arrested by the police but was taken to police station by his relatives. In his statement under Section 313 Cr.P.C., the appellant claimed that he was not present when his wife was stabbed. He stated that he was in Paschim Vihar and was coming towards the drain when this information was given to him by his brother Dharmender who was accompanied by his uncle. He also claimed that he was barefoot and someone had taken away his slippers while he was sitting in the park.

13. DW-1 Dharmender, brother of the appellant, stated that on the day of this incident, he received a telephone call from Kamlesh, wife of the informant Shyam @ Sudama, who told him that her husband had been taken to police post and the police was asking to produce the appellant Ram. According to the witness, he went to the house of his Mause (uncle) Raj Kumar and narrated all the facts to him. Raj Kumar accompanied him. They noticed the appellant sleeping in the park near a drain in Paschim Vihar. They woke him up and told him that police was searching him. They then took the appellant to police post Nihal Vihar. DW-4 Raj Kumar stated that on 12th March, 2008 Dharmender, brother of the appellant, came to him and informed him that his brother Shyam @ Sudama had been taken to police post and the police were asking him to produce the appellant Ram. Both of them left in search of the appellant. When they were going from the side of the drain in Paschim Vihar, they noticed the appellant going towards Nihal Vihar by crossing the drain and narrated the facts to him. The appellant told them that he had not done anything and accompanied them to Nihal Vihar police post. During cross- examination, this witness admitted that he was working as a Munshi with Shri C.B. Arora, Advocate. It would be worthwhile to note here that Shri C.B. Arora, Advocate, was defending the appellant during trial.

14. Thus, there is material contradiction in the testimony of DW-1 and DW-4 as to where the appellant had met them in the night of 12th March, 2008. According to DW-1, he was found sleeping in a park and was woken up by them, whereas according to DW-4, the appellant was going towards Nihal Park by crossing the drain when he met them. Neither the appellant nor any of the defence witnesses told the court as to why the appellant, instead of going to his house, had gone to the park in the night of 12th March, 2008. It is difficult to believe that the appellant instead of returning to his house would have gone to a park and would have slept there during night. In fact, during night, one is in a hurry to return to one's house and be with one's family. In our view, he was unlikely to go to a park and rest there without there being any particular reason for doing so. There is no proof of the appellant having been taken to police post in the night of 12th March, 2008. Had the appellant been illegally detained in police post in the night of 12th March, 2008, his family members and friends would definitely have complained to the superior police officer regarding his unlawful detention, particularly when DW-4 was working as clerk with the counsel who defended the appellant during trial. We, therefore, find it difficult to believe the deposition of DW-1 and DW-4 who are related to the appellant and, therefore, accept the deposition of PW-7 and PW-20 that he was found by them on 13th March, 2008. The consequential finding is that the appellant was absconding from his house, till the time, he was arrested.

#### CONCLUSION

15. The prosecution has been able to prove that (i) the appellant was absconding from his house after murder of his wife and he has not been able to give an plausible explanation for his not being found in his house before he was arrested by the police. In *Virender Kumar Gara v. State* : 2001 III AD (Delhi) 319, a Division Bench of this court was of the view that the fact that the accused absconding immediately after the incident was a strong factor to prove his guilt. In *Amrit Lal Someshwra Joshi Vs State of Maharashtra* : AIR 1994 SC 2516, the appellant who was employed as a domestic servant was found absconding after murder of his employer. It was held to be an incriminating circumstance against him. In *State of UP v. Deoman Upadhyay* : 1960 Cri.L.J. 1504, the appellant, who had also threatened the accused, was found absconding after her death. It was held that his having threatened the deceased and his absconding immediately after the death

of the deceased by violence, lent very strong support to the case of the prosecution.

16. It has also been proved that the appellant's clothes and one of the slippers which he was wearing, at the time, he was arrested, were stained with human blood. There is no explanation from the appellant for the human blood found on his clothes and his slippers. It also stands proved that the appellant had come into possession of the knife Ex.P-1 before it was produced by him to the police and not only was the knife stained with human blood, it could also have been used for causing the injuries found on the person of the deceased.

17. It was contended by the learned counsel for the appellant that since blood group of the human blood found on the knife and the clothes could not be ascertained, it cannot be said that the human blood found on these articles was of the deceased. The fact remains that there is no explanation from the appellant as to how blood came on his clothes and on one of his slippers. The appellant was not found having any injury at the time he was arrested. He does not claim that the blood found on his clothes and slippers was his own blood or the blood of a human being other than his deceased wife. Similarly, he does not claim that the knife Ex.P-1 had blood of a human being other than his deceased wife.

In *Gura Singh v. The State of Rajasthan* : 2000 IX AD (SC) 299, Supreme Court rejected the contention that in the absence of report regarding origin of the blood, the trial court could not have been convicted the appellant. In *State of Rajasthan v. Teja Ram & Others* : 1999 (3) SCC 507, Supreme Court held that failure of the Serologist to detect the origin of the blood due to disintegration of the serum in the meanwhile does not mean that the blood stock on the axe would not have been human blood at all. It was observed that sometimes it happens, either because the stain is insufficient or due to haematological changes and plasmatic coagulation that a serologist might fail to detect the origin of the blood. In *Moti Ram v. State of Maharashtra* : JT 2002 (2) SC 637, the report of the Forensic Science Laboratory indicated that the clothes of the appellant and the knife recovered at his instance were having human blood, the group of which could not be ascertained on account of disintegration of the blood spots. It was held that merely because the blood

group on the clothes and the blood on the knife was not ascertained, could not be a reason to hold that any chain of circumstances was missing, as argued on behalf of the appellant.

18. The aforesaid circumstances lead to the irresistible conclusion that the murder of deceased Guddo was committed by no one other than the appellant. These circumstances are wholly incompatible with the innocence of the appellant and unerringly point out towards him as the person responsible for the murder of his wife. If taken singly, these circumstances may not be sufficient to prove the guilt attributed to the appellant. But, when considered cumulatively in the facts and circumstances of the case, there is no escape from the conclusion that the appellant is guilty of the murder of his wife. In taking this view, we can draw some support from the fact that the FIR inculcating the appellant in murder of his wife was lodged by none other than PW-1 Shyam @ Sudama, who is brother of the appellant. Though he did not support the prosecution when he came in the witness box, he specifically admitted his signature on the statement Ex.PW-1/A on the basis of which the FIR was registered and no explanation at all was given by him for signing this document in case he did not make this statement to the police. Considering the fact that he is the brother of the appellant, the prosecution is not justified in contending that it was because of his relationship with the appellant, that he did not support the prosecution during trial, despite having given a signed statement to the police.

19. The learned counsel for the appellant has referred to decision of this Court in *Jitender Kumar v. State NCT of Delhi* : 2009 (1) JCC 491, the dying declaration alleged to have been made by the deceased was ignored for the reason that the appellant was not questioned with reference to that dying declaration when he was examined under Section 313 of Cr.P.C. The deceased had claimed in her dying declaration that her mother-in-law had poured kerosene over her. However, kerosene residues were not detected in her clothes. The used matchsticks, the unused matchsticks and the match box lifted from the place of occurrence also did not show test of kerosene residues. Even in the MLC of the deceased, the doctor had not recorded that he had noted a smell of kerosene from the person of the deceased. It was also noted that PW-11 who had taken the deceased to the

hospital, had stated that the deceased herself had told her that her mother-in-law had not come back from duty. The court, therefore, ruled out the use of kerosene to burn the deceased and felt that this fact discredited the dying declaration made by the deceased. It was in these circumstances that the court did not place much reliance upon the fact that the appellant was found absconding after the occurrence, and observed that many-a- times an innocent person runs away fearing false arrest. However, the facts of the present case are altogether different and the appellant having been found absconding from his house is not the only circumstance appearing in evidence against him. This judgment, therefore, does not help the appellant.

20. In this case, Soni, son of the appellant and the deceased Guddo, was examined as a court witness. During initial questioning by the learned trial Judge, he stated that he was 3 year old and was studying in nursery. But, while recording his statement, the Trial Judge noted his age as ten years. Considering the discrepancies in the age given by the child during initial questioning and the age recorded by the learned trial Judge while recording his statement and also taking note of the fact that a child aged about ten years is ordinarily not expected to be studying in nursery, we directed the child to be produced before us. The child was, accordingly, produced before us on 15th July, 2010 and on questioning by us, he stated that he was 4 years old and was studying in lower KG. In his deposition before the Trial Court he stated that the deceased was asking the appellant to fix zero watt bulb which the appellant did not fix and gradually a quarrel ensued between his parents. He also pointed to the right side of the stomach as the place where the appellant hit his mother with a knife. In *Suryanarayana v. State of Karnataka* : AIR 2001 SC 482, the Supreme Court, believing the testimony of a witness aged about four years at the time of occurrence, she being the solitary eye-witness of the case, inter alia, observed that:

"The evidence of the child witness cannot be rejected per se, but the court, as a rule of prudence, is required to consider such evidence with close scrutiny and only on being convinced about the quality of the statements and its reliability, base conviction by accepting the statement of the child witness. The witness of PW2 cannot be discarded only on the ground of her being of Teen age. The fact of

being PW2 a child witness would require the court to scrutinize her evidence with care and caution. If she is shown to have stood the test of cross-examination and there is no infirmity in her evidence, the prosecution can rightly claim a conviction based upon her testimony alone. Corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. Some discrepancies in the statement of a child witness cannot be made the basis for discarding the testimony. Discrepancies in the deposition, if not immaterial particulars, would lend credence to the testimony of a child witness who, under the normal circumstances, would like to mix up what the witness saw with what he or she is likely to imagine to have seen. While appreciating the evidence of the child witness, the courts are required to rule out the possibility of the child be tutored. In the absence of any allegation regarding tutoring or using the child witness for ulterior purposes of the prosecution, the courts have no option but to rely upon the confidence inspiring testimony of such witness for the purposes of holding the accused guilty or not."

21. In *Panchhi & Others v. State of UP* : 1998 Cri.L.J. 4044, the Supreme court held that: "The evidence of the child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus an easy prey to tutoring. The evidence of the child witness must find adequate corroboration before it is relied upon as the rule of corroboration is of practical wisdom than of law."

However, considering the age of the child which would be less than two years at the time of occurrence, we are not taking his deposition into consideration, though it was vehemently contended by the learned counsel for the respondent that despite the child being only about 2 years old at the time of this incident, he was in a position to recall the incident of stabbing of his mother by his father in his presence particularly when there was no scope for tutoring of the child since he was not cited as a prosecution witness and he happened to be present in the court when the learned Trial Judge decided to examine him as a court witness.

22. For the reasons given in the preceding paragraphs we find no merit in the appeal and the same is hereby dismissed.