

Anuj Kumar and anr. Vs State

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Court : Delhi

Decided On : Feb-28-2011

Judge : Pradeep Nandrajog; Suresh Kait, Jj.

Acts : Indian Penal Code (IPC) - Sections 302, 392, 34; Code of Criminal Procedure (CrPC) (Cr.P.C) - Sections 319, 313

Appeal No. : CRL.A.17/1999; CRL.A.509/1998

Appellant : Anuj Kumar and anr.

Respondent : State

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

Advocate for Pet/Ap. : Ms.Shraddha Bhargava, Adv.

Judgement :

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

1. Vide impugned judgment and order dated 24.07.1998, appellants Ajit Singh and Anuj Kumar have been convicted for the offence of having murdered Sushma Saluja (herein after referred to as the "Deceased"), for which offence they have been sentenced to undergo imprisonment for life and pay a fine in sum of

Rs.15,000/- each; in default to undergo rigorous imprisonment for one year.

2. The case set up by the prosecution against the appellants was that Vijay Kumar Saluja PW-1, the husband of the deceased, was working on the post of Assistant Engineer in Delhi Development Authority. On 26.07.1989 at about 10.15 A.M. Vijay Kumar left his house for office leaving behind his wife i.e. the deceased alone in the house and returned to his house in the evening at about 07.00 P.M. On returning to his house, Vijay Kumar was surprised to find that the main door of his house was not bolted from inside and that the deceased was not present there. Sensing something amiss Vijay Kumar rang up his mother-in-law Vidya Wati PW-6, to inquire about the whereabouts of the deceased but she had no knowledge about the same. Fearing for the safety of the deceased, Vidya Wati accompanied by her brother Madan Lal PW-15 and other relatives came to the house of the deceased. When the deceased did not turn up in her house till about 10.00 P.M. Vijay Kumar lodged a missing person's report Ex.PW-1/A. On the basis of the aforesaid missing person's report Ex.PW-1/A lodged by Vijay Kumar, Const. Om Pal Singh PW-10, recorded DD No.37B, Ex.PW-10/A, at about 10.30 P.M. on 26.07.1989.

3. On receiving a copy of the afore-noted DD entry, SI Souji Ram PW-19, accompanied by ACP Chetan Dass PW-18, reached the house of the deceased. In the meantime, K.N. Singh (Finger Print Expert) PW-16 and HC E.M. Shaji (Photographer) PW-13, from the crime team reached the house of the deceased; on being summoned.

4. On conducting a thorough search of the house of the deceased, the aforesaid police officials found the dead body of the deceased in the box of a bed lying in a bedroom in the house of the deceased. They further saw that the box of the bed from where the body of the deceased was found and the wall of a bathroom in the house of the deceased were stained with blood. ACP Chetan Dass PW-18, lifted the blood from the aforesaid places and seized the same vide memos Ex.PW-18/C and Ex.PW-1/C respectively. K.N. Singh PW-16, inspected the house of the deceased and lifted four chance prints Q1 to Q4 found therein as recorded in his report Ex.PW-16/A. Be it noted here that the chance prints Q1 and Q2 were lifted

from the wall of the bathroom in the house of the deceased and found to be stained with blood; chance print Q3 was lifted from a glass lying in the house of the deceased and chance print Q4 was lifted from the foot of the deceased. HC E.M. Shaji PW-13, took five photographs Ex.P15/6 to Ex.P15/10; negatives whereof are Ex.P15/1 to Ex.P15/5.

5. SI Souji Ram PW-19, recorded the statement Ex.PW-1/A of Vijay Kumar Saluja and made an endorsement Ex.PW-19/A thereon, and at around 12.30 A.M. on 27.07.1989 handed over the same to Const. Shiv Narain for registration of an FIR. Const. Shiv Narain took the endorsement Ex.PW-19/A to the police station where HC Jeev Lal PW-14, registered FIR No.377/89 Ex.PW-14/A.

6. In his statement Ex.PW-1/A, Vijay Kumar Saluja stated that on 26.07.1989 at about 10.15 A.M. he left his house for office and returned to his house in the evening at about 07.00 P.M. On returning to his house, he was surprised to find that the main door of his house was not bolted from inside and that his wife i.e. the deceased was not present there. Sensing something amiss he searched for the deceased in the vicinity of his and made inquiries from his neighbors about the whereabouts of the deceased. On getting no information about the whereabouts of the deceased he telephoned his mother-in-law Vidya Wati but she also had no knowledge about the whereabouts of the deceased. After sometime his mother-in-law and her brothers namely Madan Lal, Ram Prakash and Baldev came to his house. He and Madan Lal went to police station Mayur Vihar and lodged a missing person's report of the deceased upon which the police officials came to his house and made inquiries from them. On conducting a search of his house, the police officials found the dead body of the deceased in the box of a bed lying in a bedroom in his house. There were stab wounds on the stomach, neck, left cheek and ear of the deceased and that the blood was oozing out of the said wounds. Yesterday i.e. 25.07.1989 at about 04.00 P.M. 05.00 P.M. appellants Ajit Singh s/o Mir Singh r/o village Munirka who used to work in his office and was placed under suspension and Anuj Sharma r/o village Munirka had come to his house to do some carpentry work. Having worked in his house till late night the appellants spent the night in his house and left from there at about 05.00 A.M. on 26.07.1989. The appellants had promised to him that they would bring a servant to his house

today but they did not come. No servant or any other person was employed in his house. While leaving for his office he had asked a washer woman to collect the clothes from his house for ironing.

7. On 27.07.1989 the body of the deceased was sent to the mortuary where at around 10.15 A.M. Dr.L.T. Ramani PW-11, conducted the post-mortem of the deceased and gave his report Ex.PW-11/A which records that following external injuries were found on the person of the deceased:-

"1. Incised wound 1.5 cm x 0.2 cm x skin deep on left ala of nose.

2. Linear abrasion 1 cm x 0.2 cm on the upper lip left side bruising at lip margin.

3. Bruise with abrasion reddish in color on lower lip nuko cutavenous function 0.5 x 0.5 cm.

4. Incised stab wound 1.5 cm x 0.5 cm x skin deep vertically placed on left side chest over 6 th rib, lower end acutely cut.

5. Six incised wounds transversely placed 0.5 cm apart between tragus of left ear and left mandibular angle. Size 1cm to 2 cm x muscle deep. One of the ends is more acutely cut.

6. Superficial cut 1 cm long x skin deep on left exterior ear 1 cm above external (illegible).

7. Two incised wounds each 1.5 cms long 0.3 cm apart on left side upper part of neck sub mandibular region. Medial end is acutely cut, outer end squarish.

8. Sixteen incised wounds all placed transversely on left side and front of neck over 10 cm x 9 cm area. Size 1.5 cm to 2.5 cm x ?. Medial ends of most the wounds is acutely cut.

9. There are some patterned abrasions on the front sides of neck, more on the left side wider on upper part and tapering towards supra sterna notch (illegible). Similar marks seen on right claricular area.

10. Five incised wounds placed vertically on right front of neck upper part 7 cm x 4 cm area Size varying from 1.5 cm x 3 cm x ?, lower ends acutely cut.
11. Incised wound 2.5 cm x 1 cm x oblique on right side (illegible) aspect neck, upper medial end acute.
12. Incised wound 1 cm x 0.5 cm x skin deep present 3 cm above the medial end right clavicle.
13. Fourteen incised wounds scattered over front of abdomen over para umbilical region, mostly to the left of midline and one humber area covering 20 cm x 16 cm area. Size of individual wound varying from 1.7 cm x 3 cm. One of the ends is acutely cut and another squarish.
14. Superficial linear cut 1 cm long curved on the back of left hand nail mark."
8. The post-mortem report Ex.PW-11/A of the deceased records that all the injuries found on the person of the deceased were ante-mortem in nature; that save and except injury No.9 all the other injuries found on the person of the deceased were caused by some sharp weapon; that injury No.9 found on the person of the deceased is an imprint of some blunt object having such a pattern; that injuries over neck and abdomen found on the person of the deceased were individually and collectively sufficient to cause death in the ordinary course of nature and that the death of the deceased was caused due to hemorrhagic shock consequent to the injuries found on the person of the deceased.
9. After conducting the post-mortem, the doctor handed over the clothes and blood sample of the deceased on a gauze to Const. Kuldeep Kumar PW-2 and Const. Jagdish Chander PW- 9, who seized the same vide memo Ex.PW-2/A.
10. Since the needle of suspicion was pointing towards the appellants in view of the statement Ex.PW-1/A of Vijay Kumar Saluja, the police set out to apprehend them. On the basis of a secret information, the appellants were arrested from village Munirka on 28.07.1989. ACP Chetan Dass PW-18, interrogated appellant Ajit Singh in the presence of SI Souji Ram PW-19 and the relatives of the deceased namely Vijay Kumar Saluja PW-1 and Madan Lal PW-15. ACP Chetan

Dass PW-18, seized the clothes and shoes worn by appellant Ajit Singh at the time of his arrest vide memo Ex.PW-1/L. Appellant Ajit Singh made a disclosure statement Ex.PW-1/J, wherein he stated that he along with appellant Anuj Kumar committed the murder of the deceased as also looted the ornaments of the deceased and that he can get recover the knife used by him for murdering the deceased. Thereafter appellant Ajit Singh led the aforesaid police officials to a drain and got recovered a knife from the said drain in the presence of Vijay Kumar Saluja PW-1 and Madan Lal PW-15, which knife was seized by ACP Chetan Dass vide memo Ex.PW-1/N.

11. ACP Chetan Dass PW-18, interrogated appellant Anuj Kumar Sharma in the presence of SI Souji Ram PW-19 and the relatives of the deceased namely Vijay Kumar Saluja PW-1 and Madan Lal PW-15. Appellant Anuj Kumar made a disclosure statement Ex.PW-1/K, wherein he stated that he along with appellant Ajit Kumar committed the murder of the deceased as also looted the ornaments of the deceased and that he can get recover the clothes worn by him at the time of the commission of the crime and the ornaments of the deceased looted by him and appellant Ajit Singh. Pursuant thereto, appellant Anuj Kumar led the aforesaid police officials to his house and got recovered a vest, shirt, pant and shoes from there in the presence of Vijay Kumar Saluja PW-1 and Madan Lal PW-15. Thereafter appellant Anuj Kumar led the aforesaid police officials to a forest and got recovered thirty-two pieces of jewelry buried in the ground, which jewelry pieces were seized by ACP Chetan Dass vide memo PW-1/P.

12. On 30.07.1989 ACP Chetan Dass PW-18, sent the shoes and the knife recovered at the instance of appellant Ajit Singh to Dr.L.T. Ramani PW-11, for his opinion. Vide his opinion Ex.PW-11/C Dr.L.T. Ramani opined that the soles of the shoes recovered at the instance of appellant Ajit Singh show some distinct pattern and exactly resemble the patterned abrasions seen on the neck of the deceased; that the patterned abrasion seen on the neck of the deceased could have been caused with the shoes recovered at the instance of appellant Ajit Singh and that the injuries found on the person of the deceased are possible to have been caused the knife recovered at the instance of appellant Ajit Singh.

13. The seized materials; namely, the clothes and blood sample of the deceased, the clothes and shoes worn by appellant Ajit Singh at the time of his arrest; the knife recovered at the instance of appellant Ajit Singh and the clothes and shoes recovered at the instance of appellant Anuj Kumar were sent to Central Forensic Science Laboratory for serological examination. Vide CFSL report Ex.PW-18/G it was opined that blood group of the deceased was AB; that blood of AB group was detected on the shirt worn by appellant Ajit Singh at the time of his arrest; that blood of AB group was detected on the shirt recovered at the instance of appellant Anuj Kumar and that blood of AB group was detected on the knife recovered at the instance of appellant Anuj Kumar.

14. When in custody sample palm impressions of appellant Ajit Singh were obtained by the police in accordance with the provisions of Prisoners of Identification Act and the same were sent to Central Forensic Science Laboratory for comparison with the chance prints Q1 to Q4 lifted from the house of the deceased. Vide CFSL report Ex.PW-17/D it was opined that the chance print Q1 lifted from the house of the deceased is identical with the right hand palm print of the palm impression of appellant Anuj Kumar.

15. Be it noted here that during the investigation, the police recorded the statements Ex.PW-6/DA and Ex.PW-15/A of Vidya Wati, the mother of the deceased, and Madan Lal, the maternal uncle of the deceased respectively, in which statements it was not stated that Vijay Kumar Saluja used to harass the deceased for dowry and that his involvement is suspected in the crime of the murder of the deceased. On the contrary, the statement Ex.PW-15/A of Madan Lal records that the deceased had never made any complaints against her husband Vijay Kumar.

16. Armed with the aforesaid materials, a charge sheet was filed against the appellants. The charges were framed against the appellants for having committed offences punishable under Section 302 and 392 IPC read with Section 34 IPC.

17. Before proceeding to note the evidence led before the learned Trial Judge in the present case, it is most apposite to notice a significant development which took place during the course of the trial in the present case. On 01.02.1996 Vidya Wati

PW-6, the mother of the deceased filed an application under Section 319 Cr.P.C. for summoning the husband of the deceased Vijay Kumar Saluja as an accused in the present case, inter-alia stating therein that Vijay Kumar Saluja used to harass the deceased for dowry; that the appellants murdered the deceased at the instance of Vijay Kumar Saluja and that the Investigating Officer did not probe the role of Vijay Kumar Saluja in the crime of the murder of the deceased despite the specific assertions made by Vidya Wati that she suspects the hand of Vijay Kumar in the murder of the deceased. Vide order dated 06.09.1997 the learned Trial Judge dismissed the aforesaid application filed by Vidya Wati. (The order dated 06.09.1997 passed by the learned Trial Judge shall be referred to in detail in the subsequent paras after noticing the evidence led before the learned Trial Judge for the said order is predicated upon the evidence of the witnesses of the prosecution particularly Vidya Wati PW-6 and Madan Lal PW- 15)

18. Apart from examining the various police officers who were associated with the investigation of the present case, the prosecution examined Vijay Kumar Saluja, Vidya Wati, Dr.L.T. Ramani, Dalip Singh, Madan Lal, K.N. Singh, ACP Chetan Dass and SI Souji Ram as PW-1, PW-6, PW-12, PW-15, PW-16, PW-18 and PW-19 respectively.

19. Vijay Kumar Saluja PW-1, the husband of the deceased, deposed in harmony with his earlier statement Ex.PW-1/A. Additionally, he deposed that during the time when the police was conducting investigation in his house on the intervening night of 26.07.1989 and 27.07.1989 he opened an almirah kept in his house and discovered that thirty-two pieces of jewelry belonging to the deceased were missing. The appellants were arrested from village Munirka on 28.07.1989 in his presence. The police seized the clothes and shoes worn by appellant Ajit Singh at the time of his arrest in his presence. Appellant Ajit Singh got recovered a knife from a drain in his presence. Appellant Anuj Kumar got recovered a shirt, pant, vest and shoes from his house in his presence. Appellant Anuj Kumar got recovered thirty pieces of jewelry buried in the earth in a forest in his presence. The jewelry pieces recovered at the instance of appellant Anuj Kumar belonged to the deceased.

20. Vidya Wati PW-6, the mother of the deceased, deposed that Vijay Kumar Saluja used to harass the deceased for dowry and that the deceased told the same to her maternal uncle Madan Lal. Vijay Kumar Saluja demanded a sum of Rs.1,00,000/- from her and threatened to kill the deceased in case the said amount was not paid to him. On 26.07.1989 Vijay Kumar telephoned her to inquire about the whereabouts of the deceased and informed her that the deceased is not traceable. On hearing the same she suspected some foul play and thus immediately rushed to the house of the deceased along with her son and brothers. After sometime of her arrival in the house of the deceased the police reached there and found the dead body of the deceased in the box of a bed lying in a bedroom of the house of the deceased. On seeing the dead body of the deceased she became unconscious. When she gained consciousness after sometime she saw that Vijay Kumar showed no sign of remorse. Subsequently she came to know that Vijay Kumar along with his friend appellant Ajit Singh and his accomplice appellant Anuj Kumar had murdered the deceased. On being interrogated by the police the appellants informed that they had murdered the deceased at the instance of Vijay Kumar. She, her son and her brother informed the police that Vijay Kumar is the murderer of the deceased but the police did not take any action in said regard as the police was won over by Vijay Kumar. On being confronted with the factum of omission of the facts regarding harassment of the deceased by Vijay Kumar and the involvement of Vijay Kumar in the murder of the deceased the witness stated that she had told the aforesaid facts to the police but the police did not record the same in her statement Ex.PW-6/DA. On being questioned about the inaction of the police in taking any action against Vijay Kumar the witness stated that she did not take any action whatsoever against the police in said regards.

21. Dr.L.T. Ramani PW-11, deposed that the post-mortem report Ex.PW-11/A of the deceased and the opinion Ex.PW-11/C was prepared by him.

22. Dalip Singh PW-12, deposed that he was running a video library shop and that Vijay Kumar used to come to his shop for taking video cassettes on rent from him. One day in the year 1989 at about 11.00 P.M. he had gone to the house of the deceased to collect the video cassettes rented by Vijay Kumar where he saw that

two boys who were known to him were present there. When he was about to leave the house of the deceased some discussion took place between the said two boys and one of the said two boys accompanied him to his shop for the purposes of taking a video cassette from him. He gave one video cassette to the said boy. On the next day he had sent his servant to collect the video cassette from the house of Vijay Kumar and his servant informed him that the wife of Vijay Kumar had been murdered. Appellant Ajit Singh is one of the two boys who had met him in the house of Vijay Kumar one day in the year 1989 but that he cannot identify the other boy.

23. Madan Lal PW-15, the maternal uncle of the deceased, deposed that on 26.07.1989 he received a message from his sister Vidya Wati that the deceased is not traceable upon which he along with Vidya Wati and his brother Ram Prakash went to the house of the deceased. On getting no information about the whereabouts of the deceased till about 10.00 P.M. they went to police station where Vijay Kumar lodged the missing person's report. After sometime the police came at the house of the deceased and found the body of the deceased in the box of a bed lying in a bedroom in the house of the deceased. The appellants were arrested from village Munirka on 28.07.1989 in his presence. The police seized the clothes and shoes worn by appellant Ajit Singh at the time of his arrest in his presence. Appellant Ajit Singh got recovered a knife from a drain in his presence. Appellant Anuj Kumar got recovered a shirt, pant, vest and shoes from his house in his presence. Appellant Anuj Kumar got recovered thirty pieces of jewelry buried in the earth in a forest in his presence. On being interrogated by the police appellant Ajit Singh informed that he and appellant Anuj Kumar had murdered the deceased at the instance of Vijay Kumar. He did not ask the police to take any action against Vijay Kumar after coming to know of his involvement in the murder of the deceased. He did not tell the police that Vijay Kumar used to harass the deceased for dowry. He first deposed that Vijay Kumar did not demand anything from his mother-in-law Vidya Wati but subsequently deposed that Vidya Wati told him that Vijay Kumar was demanding something from her. The deceased never told him that Vijay Kumar used to harass her for dowry but he used to feel that the deceased was somewhat unhappy. On being questioned about the recording contained in his statement Ex.PW-15/A that the deceased had never made any

complaints against her husband Vijay Kumar the witness stated that he had not told the said fact to the police.

24. K.N. Singh PW-16, Finger Print expert, deposed that he had visited the house of the deceased on 27.07.1989 between 3.00 A.M. to 05.00 A.M.; lifted four chance prints Q1 to Q4 from there and prepared the report Ex.PW-16/A in said regards. Relevant would it be to note that the testimony of the said witness was not controverted on behalf of appellant Anuj Kumar.

25. ACP Chetan Dass PW-18, deposed that he had conducted the investigation in the present case. Be it noted here that no suggestions were given to the witness on behalf of the appellants that the police had lifted the appellants from their respective houses on the morning of 27.07.1989 and that appellant Anuj Kumar was taken by the police to the house of the deceased on 27.07.1989 where his palm prints were forcibly put on the wall of a bathroom in the house of the deceased. It is most relevant to note that a suggestion was given to the witness on behalf of appellant Ajit Singh that appellant Ajit Singh was present alone in his house on the morning of 28.07.1989 and that he was brought from his house to the police station. On being questioned about the inquiries made from the neighbors of the deceased the witness stated that 'There are flats on all sides of the flat in question and they are in three storeyed block. I did not interrogate any resident of Flat no.D 39 which situates just in front of the flat of the deceased. Vold. as it was very late in the night on the day of the occurrence and the residents of flat no. D 39 were sleeping I did not think it proper to disturb them and secondly the name of the suspects had come in the FIR recorded on the statements of PW of Vijay Kumar I did not think it necessary to hold further enquiry from the neighbours.'

26. SI Souji Ram PW-19, deposed that he was associated with the investigation conducted by the police in the present case. Be it noted here that no suggestions were given to the witness on behalf of the appellants that the police had lifted the appellants from their respective houses on the morning of 27.07.1989 and that appellant Anuj Kumar was taken by the police to the house of the deceased on 27.07.1989 where his palm prints were forcibly put on the wall of a bathroom in the

house of the deceased. On being questioned about the carpentry work done by the appellants at the house of the deceased the witness stated that (Quote) 'The carpentry tools were lying in the corner of the kitchen. These were not either photographed or taken in possession. I do not know whether photograph of the kitchen was taken or not. I did not mention in the proceedings conducted by me about the carpentry tools being found in the kitchen.'

27. In their statements under Section 313 Cr.P.C. the appellants pleaded innocence and false implication. Appellant Ajit Singh stated that he was employed as a laborer in Delhi Development Authority and placed under suspension at the instance of Vijay Kumar; that Vijay Kumar had falsely implicated him in the present case as Vijay Kumar wanted him to do some illegal work but he refused to do the same; that he had never visited the house of Vijay Kumar or done any work there; that on 27.07.1989 at about 04.00 A.M. the police arrested him from his house and falsely implicated him in the present case and that he did not know appellant Anuj Kumar. Appellant Anuj Kumar stated that he had never visited the house of Vijay Kumar or done any work there and that on 27.07.1989 at about 05.00 A.M. the police arrested him from his house and falsely implicated him in the present case.

28. In defence, appellant Ajit Singh examined two witnesses namely, Premwati and Chattar Singh as DW-1 and DW-2 respectively. Appellant Anuj Kumar chose not to lead any evidence in support of his defence.

29. Premwati as DW-1, the sister of appellant Ajit Singh, deposed that on 27.07.1989 at about 04.45 05.00 A.M. 3-4 persons had come to their house in village Munirka and took away appellant Ajit Singh with them. Chattar Singh DW-2, deposed that on 27.07.1989 at about 4.30-4.45 A.M. he was passing through a street in village Munirka for fetching milk when he saw that 7-8 persons were taking away appellant Ajit Singh. Out of the said 7-8 persons, four persons were wearing the uniform of the police whereas the remaining persons were in civil dress. When he tried to make some inquiries about the persons who were wearing the uniform of the police they threatened him and told him to go away.

30. As already noted herein above, vide order dated 06.09.1997 the learned Trial Judge dismissed the application under Section 319 Cr.P.C. filed by Vidya Wati for

summoning the husband of the deceased Vijay Kumar as an accused in the present case. In dismissing the said application, it was held by the learned Trial Judge that to show that Vijay Kumar was involved in the murder of the deceased it was incumbent upon Vidya Wati to first establish that Vijay Kumar used to make demands for dowry and harass the deceased on non-fulfillment of the said demands; that the circumstance that Madan Lal PW-15, who was the brother of Vidya Wati and well-versed with the family matters of Vidya Wati denied having any knowledge about the fact that Vijay Kumar used to make demands for dowry and harass the deceased on non-fulfillment of the said demands raises sufficient doubt upon the truthfulness of the claim of Vidya Wati that Vijay Kumar used to make demands for dowry and harass the deceased on non-fulfillment of the said demands and that the circumstances that Vidya Wati first time spoke in the court about the involvement of Vijay Kumar in the murder of the deceased after a period of six years from the date of the death of the deceased and that she took no action whatsoever against the Investigating Officer of the present case for not probing the role of Vijay Kumar in the crime of the murder of the deceased do not justify the summoning of Vijay Kumar as an accused in the present case.

31. Vide impugned judgment dated 24.07.1998 the learned Trial Judge had convicted the appellants. It was held by the learned Trial Judge that the testimonies of Vijay Kumar Saluja PW-1 and Dalip Kumar PW-12, when seen in the light of the facts that palm print of appellant Anuj Kumar was found in the house of the deceased and that the pattern found on the soles of the shoes of appellant Ajit Singh exactly resemble the patterned abrasion found on the neck of the deceased establishes the presence of the appellants in the house of the deceased and that the facts that human blood of same group as that of the deceased was found on the knife recovered at the instance of appellant Ajit Singh and the shirt worn by him at the time of his arrest; that human blood of same group as that of the deceased was found on the shirt recovered at the instance of appellant Anuj Kumar and that ornaments of the deceased were recovered at the instance of appellant Anuj Kumar when seen in the light of the fact that the prosecution has been able to establish the presence of the appellants in the house of the deceased till about morning of the day of the death of the deceased establish that the appellants are the perpetrators of the crimes of the murder of the

deceased and the robbery of the ornaments of the deceased.

32. During the hearing of the present appeals, following eight submissions were advanced by the learned counsel for the appellants:-

A The first submission advanced by the learned counsel for the appellant was predicated upon the missing person' report Ex.PW-1/A. Counsel argued that the circumstance that the facts that the appellants visited the house of Vijay Kumar on 25.07.1989 and stayed there till about 05.00 A.M. on 26.07.1989 or that the ornaments of the deceased were missing did not find a mention in the report Ex.PW-1/A, which was the first information given to the police by Vijay Kumar regarding the occurrence shows that the appellants had cooked up a false story and falsely implicated the appellants in the present case.

B The second submission advanced by the learned counsel for the appellants was predicated upon the testimony of Vijay Kumar PW-1. Counsel argued that the testimony of Vijay Kumar PW-1, forms the plank of the case of the prosecution against the appellants and that the learned Trial Judge has committed an illegality in accepting the testimony of Vijay Kumar at its face value. Counsel argued that the learned Trial Judge ought to have appreciated the testimony of Vijay Kumar with great caution for the reason Vijay Kumar was inimically disposed towards appellant Ajit Singh inasmuch a departmental enquiry was initiated against appellant Ajit Singh at the instance of Vijay Kumar.

C The third submission advanced by the learned counsel for the appellants was predicated upon the conduct of Vijay Kumar PW-1. Counsel argued that a conjunctive reading of the testimonies of Vijay Kumar PW-1 and Dalip Kumar PW-12 shows that the appellants stayed in the night of 25.07.1989 in the house of Vijay Kumar and watched a movie there and left his house in the morning at about 05.00 A.M. Counsel argued that the conduct of Vijay Kumar of allowing the appellants to spend the night in his house and to watch a movie on his television is most unnatural. According to the counsel, the aforesaid unnatural conduct of Vijay Kumar is a strong pointer towards the fact that Vijay Kumar had cooked up a story to falsely implicate the appellants in the present case.

D The fourth submission advanced by the learned counsel for the appellants was that the testimonies of the police officers associated with the investigation of the present case show that the wall of the bathroom in the house of the deceased was stained with blood however Vijay Kumar failed to notice the same. According to the counsel, the fact that Vijay Kumar failed to notice the blood stains present on the wall of the bathroom in the house of the deceased strongly suggests that he all along knew that the deceased is lying murdered in his house and was feigning that the deceased has gone missing.

E The fifth submission advanced by the learned counsel for the appellants is that the learned Trial Judge has not correctly appreciated the testimony of Vidya Wati PW-6, the mother of the deceased and the fact that the relations between the deceased and her husband Vijay Kumar were strained. According to the counsel, the testimony of Vidya Wati PW-6, when seen in the light of the fact that the relations between the deceased and her husband Vijay Kumar is a strong pointer towards the fact that the husband of the deceased Vijay Kumar is the perpetrator of the crime of the murder of the deceased and that the appellants have been falsely implicated in the present case.

F The sixth submission advanced by the learned counsel for the appellants was that SI Souji Ram PW-19, deposed that carpentry tools were lying in the kitchen of the house in the deceased but that the same were neither seized nor photographed by the police. According to the counsel, if the carpentry tools were indeed lying in the kitchen in the house of the deceased as claimed by SI Souji Ram, the police would have definitely seized the said tools and thus the failure of the police to seize the said tools shows that the police did not find any carpentry tools in the house of the deceased, which in turn sufficient doubt on the claim of Vijay Kumar that the appellants had visited his house on 25.07.1989 to do some carpentry work.

G The seventh submission advanced by the learned counsel for the appellants was that despite the fact that the neighbors of the deceased and Vijay Kumar were the best persons to have known about the presence of the appellants they were not examined by the police during the course of the investigation of the present

case. Counsel urged that an adverse inference needs to be drawn against the prosecution for non-examination of the neighbors of the deceased in terms of illustration (g) appended to Section 114 of Evidence Act that had the neighbors of the deceased been examined they would not have supported the case of the prosecution.

H The last submission advanced by the learned counsel for the appellants is that the learned Trial Judge committed an illegality in lightly brushing aside the defence raised by the appellants in their statements under Section 313 Cr.P.C. as also the evidence led by them in support of their evidence.

33. To deal with the first submission advanced by the learned counsel for the appellants it is necessary to note the events which happened on the day of the death of the deceased i.e. 26.07.1989. On 26.07.1989 at about 10.15 A.M. the husband of the deceased Vijay Kumar left his house for office leaving behind the deceased alone in the house. At about 7.00 7.15 P.M. Vijay Kumar returned to his house and found that the main door of his house was not bolted from inside and that the deceased was not present there. Sensing something amiss Vijay Kumar made some inquiries from his neighbors about the whereabouts of the deceased but did not get any information from them. On getting no information from his neighbors Vijay Kumar telephoned his mother-in-law Vidya Wati but again got no information from her about the whereabouts of the deceased. Thereafter the mother and other relatives of the deceased reached the house of the deceased. When the deceased did not turn up in her house till about 10.00 P.M. Vijay Kumar went to the police station and lodged the missing person's report Ex.PW-1/A. Till that time, Vijay Kumar had no knowledge that the deceased was lying murdered in her house but merely had an inkling that something untoward may have had happened to the deceased. Thus, till that time, there was no occasion for Vijay Kumar to have mentioned about the presence of the appellants in his house or to have checked whether some valuable articles are missing from his house. At about 12.30 A.M. on 27.07.1989 the police reached the house of the deceased and found the dead body of the deceased. At that time, it became clear to Vijay Kumar that the deceased was murdered in his house by some outsider who could have had access to his house in order to commit robbery in his house. At that

point of time, Vijay Kumar checked an almirah kept in his house and found that the jewelry of the deceased was missing. When the statement Ex.PW-1/A of Vijay Kumar was recorded after the discovery of the dead body of the deceased Vijay Kumar mentioned the names of the persons who had/could have visited the house of the deceased on/around the day of the death of the deceased and that the jewelry of the deceased is missing. In that view of the matter, we find no merit in the first submission advanced by the learned counsel for the appellants.

34. Animosity is doubled-edged weapon. It cuts both sides. It could be a ground for false implication and could also be a motive for committing the crime. Even if it is accepted that a departmental enquiry was initiated against appellant Ajit Singh at the instance of Vijay Kumar the possibility that appellant Ajit Singh was holding a grudge against Vijay Kumar and thus murdered the deceased in order to seek revenge from Vijay Kumar cannot be ruled out.

35. Be that as it may, it is settled legal position that the testimony of a witness cannot be disregarded merely on the ground that the witness is inimically disposed towards the accused. The rule of prudence requires the court to microscopically examine the testimony of such a witness. (See the decision of Supreme Court reported as Chandra Mohan Tiwari v State of MP 1992 Cri LJ 1091). Thus, we find no merit in the second submission advanced by the learned counsel for the appellants that the learned Trial Judge ought to have rejected the testimony of Vijay Kumar.

36. Whether the conduct of Vijay Kumar of allowing the appellants to spend the night in his house and to watch a movie on his television is unnatural?

37. It has come on the evidence on record that appellant Ajit Singh was known to Vijay Kumar as he used to work in his office. Vijay Kumar deposed that the appellants finished the carpentry work in his house in the late night. In view of his acquaintance with appellant Ajit Singh and thinking that the appellants would not be able to get a conveyance at that hour of the night to reach their respective residences, as an act of graciousness Vijay Kumar could have allowed the appellants to spend the night in his house and to watch a movie on his television. In such circumstances, we find nothing unnatural in the conduct of Vijay Kumar of

allowing the appellants to spend the night in his house and to watch a movie on his television.

38. What turns upon the fact that Vijay Kumar failed to notice the blood stains present on the wall of the bathroom in his house?

39. In our opinion, nothing. When Vijay Kumar returned from the office to his house at about 07.00 P.M. on 26.07.1989 he was surprised to find that the main door of his house was not bolted from inside and that the deceased was not present there. Sensing something amiss Vijay Kumar made inquiries about the whereabouts of the deceased but did not get any information about the same from any source. On getting no information about the whereabouts of the deceased Vijay Kumar must have got perplexed and frantic about the safety of the deceased. In such perplexed condition, it is quite possible that Vijay Kumar failed to notice the blood stains present on the wall of the bathroom in his house.

40. The fifth submission advanced by the learned counsel for the appellants is wholly misplaced as the same is based upon an incorrect reading of the testimony of Vidya Wati PW-6. Vidya Wati PW-6, deposed that the husband of the deceased Vijay Kumar along with the appellants had committed the murder of the deceased. The testimony of Vidya Wati in no way establishes that the appellants have been falsely implicated in the present case as claimed by the learned counsel for the appellants. We could have understood the submission of the learned counsel for the appellants had Vidya Wati deposed that the husband of the deceased alone was the perpetrator of the crime of the deceased. In any case, vide order dated 06.09.1997 the learned Trial Judge has found no substance in the claim of Vidya Wati that the husband of the deceased was involved in the crime of the murder of the deceased, which order has not been challenged by Vidya Wati and has attained finality. In that view of the matter, it cannot be agitated by the appellants that the husband of the deceased was the perpetrator of the crime of the deceased.

41. It is no doubt true that the police ought to have seized the carpentry tools found in the house of the deceased. But the mere failure of the police to do the same would not raise a doubt on the testimony of Vijay Kumar that the appellants

had visited his house to do some carpentry work. In said regards, we are fortified by the decision of Supreme Court reported as *Paras Yadav & Ors v State of Bihar* AIR 1999 SC 644 wherein it was held that in case of a lapse or omission committed by an investigating agency the prosecution evidence is to be examined carefully de hors such omissions to find out whether the said evidence is reliable or not and to what extent, such lapse affected the object of finding the truth. The perfunctory investigation conducted by an investigating agency should not stand in the way of evaluation of the evidence by the courts in finding the truth.

42. Whether it was incumbent upon the prosecution to examine the neighbors of the deceased to establish the presence of the appellants in the house of the deceased?

43. The prosecution examined two witnesses namely, Vijay Kumar PW-1 and Dalip Singh PW-12, to establish the presence of the appellants in the house of the deceased between 25.07.1989 till about 05.00 A.M. on 26.07.1989. Having already examined two witnesses regarding the presence of the appellants in the house of the deceased there was no requirement upon the prosecution to examine other witnesses on the said aspect of the matter for it is axiomatic that evidence is not to be counted but only weighed and it is not the quantity but the quality of the evidence which matters before a court. In any case, there is no guarantee that the neighbors of the deceased knew about the presence/non- presence of the appellants in the house of the deceased. It is too much expect that a neighbor would know about the visit of each and every person to the house of his neighbor.

44. This takes us to the last submission advanced by the learned counsel for the appellants. As already noted herein above, appellant Ajit Singh stated in his examination under Section 313 Cr.P.C. that on 27.07.1989 at about 04.00 A.M. the police had arrested him from his house and falsely implicated him in the present case. In said regards, suffice would it be to note that a suggestion was given to ACP Chetan Dass PW-18, during his cross-examination on behalf of appellant Ajit Singh on behalf of appellant Ajit Singh that appellant Ajit Singh was present alone in his house on the morning of 28.07.1989 and that he was brought from his house to the police station. The aforesaid suggestion given to ACP

Chetan Dass on behalf of appellant Ajit Singh that appellant Ajit Singh was arrested from his house on 28.07.1989 demolishes the defence of appellant Ajit Singh that he was arrested by the police on 27.07.1989.

45. Appellant Anuj Kumar stated in his examination under Section 313 Cr.P.C. that on 27.07.1989 at about 05.00 A.M. the police had lifted him from his house and took him to the house of the deceased where his palm impressions were forcibly put on the wall of the bathroom in the house of the deceased. As already noted herein before, no suggestion was given on behalf of appellant Anuj Kumar to the police officers who had arrested him namely ACP Chetan Dass PW-18 and SI Souji Ram PW-19, that the police had lifted appellant Anuj Kumar from his house at about 05.00 A.M. on 27.07.1989 and took him to the house of the deceased where his palm impressions were forcibly put on the wall of the bathroom in the house of the deceased.

46. There is yet another aspect of the matter. K.N. Singh PW- 16, deposed that on 27.07.1989 between 03.00 A.M. to 05.00 A.M. he lifted the chance prints Q1 to Q4 from the house of the deceased, which deposition was not controverted on behalf of appellant Anuj Kumar. It is a well established rule of evidence that a party should put to each of his opponent's witnesses so much of his case as concerns that particular witness. If no such questions are put, the Court presumes that the witness' account has been accepted. In that view of the matter, even if the defence of appellant Anuj Kumar that the police had lifted him from his house at about 05.00 A.M. on 27.07.1989 and took him to the house of the deceased where his palm impressions were forcibly put on the wall of the bathroom in the house of the deceased is taken to be true, the question which arises is that how come the chance print Q1 which was found to be identical with the right hand palm print of the palm impression of appellant Anuj Kumar was lifted by K.N. Singh from the house of the deceased on 27.07.1989 prior to 05.00 A.M. In view of the aforesaid, we find no truth in the defence taken by appellant Anuj Kumar.

47. Having repelled the submissions advanced by the learned counsel for the appellants, we proceed to consider whether the learned Trial Judge has correctly come to the conclusion that the appellants are guilty of the murder of the

deceased.

48. Mr.Pawan Sharma, Standing Counsel pointed out following seven circumstances are inculpatory of the guilt of the appellants appear on the record:-

I The appellants were present in the house of the deceased a day prior to the death of the deceased, which presence assumes significance as the appellants were the only outsiders who had visited the house of the deceased around the day of the death of the deceased.

II Chance print lifted from the wall of the bathroom in the house of the deceased which was identical with the right right hand palm print of the palm impression of appellant Anuj Kumar Sharma was found to be stained with blood.

III The pattern found on the soles of the shoes worn by the Ajit Singh at the time of his arrest exactly resembled the patterned abrasions seen on the neck of the deceased.

IV The injuries found on the person of the deceased were possible to have been caused by the knife recovered at the instance of appellant Ajit Singh.

V Human blood of same group as that of the deceased was detected on the knife recovered at the instance of appellant Ajit Singh as also on the shirt worn by appellant Ajit Singh at the time of his arrest.

VI Human blood of same group as that of the deceased was detected on the shirt recovered at the instance of appellant Anuj Kumar.

VII Ornaments of the deceased were recovered at the instance of appellant Anuj Kumar.

49. In view of the fact that the learned counsel for the appellants was not able to demonstrate any serious flaw in the witnesses examined by the prosecution to prove the existence of the afore-noted circumstances enumerated by the learned counsel for the State she did not seriously dispute the existence of the said circumstances.

50. In addition to the afore-noted seven circumstances enumerated by the learned counsel for the State, we notice two more circumstances appearing against the appellants.

51. The first circumstance noted by us is that a false defence was taken by the appellants that they had never visited the house of the deceased and that they were arrested by the police on 27.07.1989. We have already held in foregoing paras that the defence taken by the appellants that they were arrested by the police on 27.07.1989 is false. As regards the presence of the appellants in the house of the deceased, the testimonies of Vijay Kumar PW-1 and Dalip Kumar PW-12 and the fact that the chance print lifted from the wall of the bathroom in the house of the deceased was found to be identical with the right hand palm print of the palm impression of appellant Anuj Kumar sufficiently establish that the appellants were present in the house of the deceased a day prior to her death.

52. The second circumstance noted by us is that the place of recovery of the body of the deceased suggests that more than one person was involved in the crime of the murder of the deceased. The blood stains were found in the bathroom in the house of the deceased whereas the body of the deceased was found in the box of the bed lying in a bedroom in the house of the deceased, which circumstance suggests that the deceased was murdered in the bathroom and that the body of the deceased was lifted by her assailants till the bedroom and thereafter put in the box of the bed lying in the said bed. It is most difficult for a person to single handedly lift the body of the deceased from the bathroom to the bedroom and thereafter put the same in the box of the bed lying in the bedroom.

53. It is well settled that circumstantial evidence in order to furnish a basis for conviction requires a high degree of probability, that is, so sufficiently high that a prudent man considering all the facts, feels justified in holding that the accused has committed the crime with which he is charged. From the afore-noted nine incriminating circumstances appearing the appellants, a prudent man would definitely come to the conclusion that the appellants are guilty of the crime of the murder of the deceased. We thus hold that the appellants are guilty of the murder of the deceased.

54. In view of above discussion, the above captioned appeals are dismissed. The bail bonds and surety bonds of the appellants are cancelled. The appellant shall surrender forthwith to serve the remaining sentence.

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