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**(2009) 08 DEL CK 0082**  
**In the Delhi High Court**  
**Case No : Criminal A. 216 of 2004**

Bhutto Ram

APPELLANT

Vs

The State (GNCT) of Delhi

RESPONDENT

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**Date of Decision :** 27-08-2009

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313  
Evidence Act, 1872 — Section 45  
Penal Code, 1860 (IPC) — Section 309

**Citation :** (2009) 08 DEL CK 0082

**Hon'ble Judges :** Pradeep Nandrajog, J; Indermeet Kaur, J

**Bench :** Division Bench

**Advocate :** Charu Verma, for the Appellant; Pawan Sharma, Assistant Public Prosecutor, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Pradeep Nandrajog

1. Vide impugned judgment and order dated 21.3.2003, two matters have been disposed of by the learned Trial Judge. In both, appellant Bhutto Ram was the accused.
2. At Sessions Trial No. 124/2001, pertaining to FIR No. 272/01 PS Kirti Nagar, Bhutto Ram was charged for the offence punishable under No. 302/394 IPC. At Sessions Trial No. 125/2001 pertaining to FIR No. 285/01 PS Kirti Nagar, Bhutto Ram was charged for the offence punishable u/s 309 IPC.
3. Bhutto Ram has been held guilty in both Sessions Trials and has been directed to undergo imprisonment for life for the offence which was subject matter of FIR No. 272/2001. For the offence pertaining to FIR No. 285/01 he has been sentenced to undergo simple imprisonment for three months. Both sentences i.e. the sentences for the offence which was subject matter of both FIRs have been directed to run concurrently.

4. The case of the prosecution against Bhutto Ram was that on 13.5.2001 he fatally assaulted Kala Rai, the deceased, in her flat bearing Municipal No. C-118, Double Storey, Ramesh Nagar, which was on the first floor. He did so to commit robbery. Her cries of rescue i.e. 'bachao-bachao' attracted the attention of persons in the neighbourhood who responded to the summons to rescue. A beat constable in the area saw the crowd gathered on the street outside Municipal No. C-118, Ramesh Nagar. The police control room was conveyed the information of a lady crying for rescue in the flat in question. The police responded to the summons to rescue. The flat was found locked from within and it had to be broken into. Household belongings were found scattered inside. Kala Rai was found fatally assaulted lying dead in a pool of blood in the kitchen of the flat. In the balcony thereof, the appellant was found with injury on his neck. As per the prosecution, the appellant who had no past history of any criminal activity panicked when people gathered outside the street on hearing the cries of the deceased, and losing his moorings attempted to commit suicide. Thus, in the same sequence of events, the appellant committed the murder of Kala Rai and attempted suicide.

5. To prove the case of the prosecution, Bhagi Rani PW-11 deposed that she received a call from a neighbour of the deceased at 8:45 PM on 13.5.2001 that cries of 'bachao- bachao' were coming from the house of the deceased and the lights of the house were off. She immediately informed Ishwar Rai PW-1, the brother of the deceased of the said fact.

6. Ishwar Rai PW-1, deposed that at 9:00 PM on 13.5.2001, he was at his house which was at a distance of 5 to 7 minutes walk from the house of the deceased and he received a telephone call informing him that cries of rescue i.e. 'bachao-bachao' were coming from the house of his sister i.e. the deceased and the lights were off and people had gathered outside his sisters house. He immediately reached the spot. The door was closed and police came. A Sikh police gentleman succeeded in breaking the door and found inside, his sister lying dead in the kitchen and the accused was found injured in the balcony of the house. Ishwar Rai deposed further that his statement Ex.PW-1/A, on basis whereof the FIR was registered, was recorded at the spot and that it bore his signatures at point 'A'. He further deposed that blood and blood stained earth (should read as 'concrete') was lifted from the flat, as recorded in the memo Ex.PW-1/B. A double bed sheet, a pillow cover and a pair of black leather shoes, which were stained with blood, were lifted by the police as recorded in the memo Ex.PW-1/C. A knife Ex.P-1 was lifted from the spot and a blood stained shirt of blue-white colour was also lifted from the spot as recorded in the memo Ex.PW-1/D. The sketch Ex.PW-1/E of the knife was prepared in his presence. Tools used by an electrician Ex.P-2 to Ex.P-6 were also lifted as recorded in the memo Ex.PW-1/F.

7. Const. Paramjit Singh PW-13 deposed that on 13.5.2001 he was on duty at Beat No. 5 and at 9:00 PM, when he reached house No. C-118, Ramesh Nagar,

he saw a crowd having gathered and from the first floor of the house cries of 'bachao-bachao' could be heard. He went upstairs but found the main door locked from inside. There was an iron gate with a wire mesh which was latched from inside. He opened the latch of the iron door using a 'sli' which is meant for setting the turban and broke the door. In the meantime, PCR van and Ishwar Rai, the brother of the deceased, also reached. They all entered the premises and saw blood stains on the door of the kitchen which was found closed. The door was opened and a dead body of an old woman was found in a pool of blood. Senior police officers reached the spot. Articles were lying scattered in the bedroom and the door of the balcony at the back side was also broken and the accused was seen lying there with blood oozing from his nose. Blood stained knife was found on the floor of the balcony. Blood was found on the chaddar and pillow in the house. The IO recorded the statement of Ishwar Rai and sent the rukka to the police station.

8. ASI Mahavir Singh PW-12 deposed that in the intervening night of 13/14.5.2001 he was incharge of PCR Van 'Power-23' in the area of PS Kirti Nagar. At about 9:00 PM information was received that a lady in House No. C-118 Ramesh Nagar was crying 'bachao-bachao' and that the lights of the said house were off. He rushed to the said house and met Const. Paramjit Singh as well as other local police staff already present there. The house was found locked from inside and Const. Paramjit Singh managed to break the door open. On entering the house, blood was found on the door of the kitchen and a dead body of an old lady was found lying in a pool of blood in the kitchen. Additional SHO Sh.R.L.Gulati PW-20 also reached there. The doors of the satsang room and the bed room which were locked from inside were broken open and in the bed room various articles were found lying scattered. The balcony door, which was also locked, was broken open and the accused, bleeding from his neck, was found lying there. He i.e. ASI Mahavir Singh removed the accused to Deen Dayal Upadhyay Hospital.

9. Gulab Rai PW-2 deposed that deceased Kala Rai, aged 60 years, was his sister and used to reside alone in her Municipal No. C-118, Double Storey, Ramesh Nagar. Kala Rai used to conduct a satsang at her house between 6:00 AM to 7:00 AM and 5:00 PM to 6:00 PM, everyday. At about 9.00 PM on 13.5.2001 he received a telephone call at his house from Smt.Bhagi informing him that something was wrong in the house of Kala Rai as cries of 'bachao-bachao. were coming therefrom and a huge crowd had gathered outside. He immediately reached the house of his sister and found a huge crowd gathered there, trying to open the door which was locked from inside. A Sikh constable, using a steel pin used for setting the hair in a turban, succeeded in opening the door. On entering the house they found blood on the door of the kitchen and the floor outside and his sister Kala Rai lying dead in a pool of blood in the kitchen. After breaking open the various doors of the house which were locked from within, they found the accused in the balcony of the said house. The accused apparently had a cut wound on his neck and was bleeding therefrom. The accused was taken to the

hospital. Gulab Rai deposed that no one could have entered or gone out of the house, before their entering the house, as at that time all the doors of the house were locked from within. The police lifted blood, blood stained earth from the kitchen and seized them vide memo Ex.PW-1/B. From the bed room a blood stained bed sheet, pillow cover and a pair of black leather shoes were seized vide memo Ex.PW-1/C. From the balcony blood, a blood stained knife and a blood stained shirt were taken into possession vide memo Ex.PW-1/D. Tools used by electricians were also recovered and seized.

10. On being cross examined by the counsel for the accused he stated that the police brought the accused to the house of the deceased on 19.5.2001 and at that time he i.e. Gulab Rai was present there.

11. HC Narender Singh PW-17 deposed that at about 9:32 PM in the intervening night of 13/14.5.2001 he received a copy of DD No. 22A and immediately left for the spot i.e. C-118, Ramesh Nagar, 1st floor. There he found a dead body of a lady lying in a pool of blood. The body had injuries which appeared to have been caused by a sharp edged weapon. The Additional SHO Sh. R.L. Gulati also reached there and recorded the statement of Ishwar Rai brother of the deceased. After endorsing the said statement Sh. R.L. Gulati handed over the rukka to him which he took to PS Kirti Nagar and got the case FIR registered. He brought a copy of the FIR and the rukka back to the spot.

12. HC Mohd. Yubsiroon PW-16 deposed that in the intervening night of 13/14.5.2001 copy of DD No. 22A was assigned to HC Narender. He accompanied HC Narender to House No. D-118, Ramesh Nagar where the SHO had also reached. They found the dead body of Kumari Kala Rai lying in a pool of blood in the kitchen of the house. The body had injuries in the abdomen, chest and legs which apparently were caused by a sharp object. The doors of the rooms of the house were locked from inside and had to be broken open. The accused was found in the balcony with blood oozing from his neck. A blood stained knife was also lying nearby. Accused was sent to DDU Hospital. The investigating officer recorded statement of Ishwar Rai, brother of the deceased; got the spot photographed; summoned the crime team and sent the dead body to the mortuary of DDU Hospital. Blood lying at the spot and blood stained earth were seized from the kitchen vide memo Ex.PW-1/B. Blood was lifted from the double bed in the bed room along with a blood stained pillow cover and a pair of chappals and were seized vide Ex.PW-1/C. Blood and a blood stained knife were lifted from the balcony and seized vide memo Ex.PW-1/D. Sketch Ex.PW-1/E of the knife was prepared by the investigating officer. One screw driver, one plass, one brass tester and one red coloured cello tape also found lying at the spot were seized vide memo Ex.PW-1/F. On being cross examined he deposed that except the main gate there was no other way to enter the house.

13. Inspector R.L. Gulati PW-20 deposed that on 13/14.5.2001 he was posted at PS Kirti Nagar as the Additional SHO. He reached the spot i.e. House No. 118, Double Storey Ramesh Nagar and met HC Narender Singh, HC Mohd. Yubsiroon

and Const. Paramjit Singh who were already present there and had managed to break open the door of the house. He found the dead body of Kumari Kala Rai lying in the kitchen of the house. The bed room and the Satsang room were also locked from inside and had to be broken. The accused was found lying on the floor in the balcony with an injury in his neck and bleeding therefrom. The accused was sent to DDU Hospital. On searching the house, in particular, the bed room, an almirah therein was found open and many household articles lying scattered; Small tin boxes were also found lying open. He recorded statement Ex.PW-1/A of Ishwar Rai and sent for the registration of a formal FIR. He summoned photographer who took 31 photographs of the spot. He prepared site plan Ex.PW-20/A. The crime team arrived and lifted four chanced prints from the almirah in the room. He conducted inquest proceedings and sent the dead body to the mortuary DDU Hospital. Blood, blood stained earth and earth control were lifted from the kitchen and seized vide memo Ex.PW-1/B. Blood stained bed sheet, pillow cover and a pair of black leather shoes were lifted from the bedroom of the house and seized vide memo Ex.PW-1/C. From the balcony a blood stained knife, blood, blood stained earth and earth control were lifted and seized vide memo Ex.PW-1/D. He prepared sketch Ex.PW-1/E of the knife. Electric tools also recovered from the verandah were seized vide memo Ex.PW- 1/ F. He went to DDU Hospital and enquired about the condition of the accused. He seized the blood stained pants and socks of the accused vide memo Ex.PW-16/A and took the personal search of the accused vide Ex.PW-16/B. After the dead body was identified by Ishwar Rai and Gulab Rai, the post-mortem of the same was got conducted. The clothes of the deceased were seized vide memo Ex.PW-13/A. Blood sample of the accused was collected vide memo Ex.PW-15/A. The statement of the accused could be recorded only on 19.5.2001 when, being declared fit, he was discharged from the hospital. On interrogation the accused made a disclosure statement Ex.PW-10/A on basis whereof an FIR was got registered for the offence punishable u/s 309 IPC. Accused pointed out the place of occurrence vide memo Ex.PW-10/B. A site plan to scale Ex.PW-6/A was got prepared and the post-mortem report was collected. The knife recovered from the spot was sent to Dr. L.K. Barua for his opinion regarding the same being the possible weapon of offence. His opinion vide Ex.PW-4/B was obtained. The investigation pertaining to the FIR for the offence punishable u/s 309 IPC was assigned to SI Jagdish Prasad.

14. It may be recorded that Nanak Chand PW-3 who was called to the spot lifted 4 chanced prints, 2 of which were those of the deceased and 2 could not be linked to the accused.

15. Not finding any blemish in the testimony of the witnesses of the prosecution and the fact that the appellant was apprehended from within the precincts of the house of the deceased, the learned Trial Judge noted that the injuries on the deceased were 11 in number, being:

1. On a incised wound on the parietal area of scalp. Size 3 cm x 1 cm bone deep.

2. Two incised wounds size 2.5 cm. x 1 cm and the other one 2 cm x 1 cm seen 3 cm. below the injury No. 1.
3. One big incised wound on the back of neck placed vertically size 9 cm x 1 cm. muscle deep.
4. 3 incised wounds on the right side nap of neck within an area of 7 cm x 5 cm. The individual size of the wound varied from 2 cm to 1.8 cm.
5. Incised wound on the left side back nap of neck size 1.5 cm x 1 cm.
6. Incised wound on the lateral aspect of left eye brow size 1.5 cm x 0.3 cm.
7. 5 incised wounds in front side base of neck involving an area of 10 cm x 7 cm. size varied from 2 cm to 1.9 cm and were? deep.
8. 6 incised wounds on the upper part of abdomen. Size varied from 2 cm to 2.8 cm and? deep. The area involvement was 18 cm x 7 cm.
9. Contusion on the right arm on its back size 3 cm x 2 cm.
10. Incised wound on the left shoulder on its front side 2 cm x 1 cm.
11. Incised wound on right shoulder on its back side size 3 cm x 1 cm.
16. Thus, learned Trial Judge has held that the evidence establishes the truthfulness of the case of the prosecution. The result is a finding of guilt against the appellant for the offence of murder and attempted suicide.
17. With reference to the testimony of Const. Paramjit Singh, learned Counsel urged that as per his testimony it was apparent that the door of the balcony was locked and it is thus obvious that the appellant was in no position to access the deceased who was found dead in the kitchen. Counsel urges that under the circumstances, possibility of somebody else being the assailant cannot be ruled out more so for the reason even the appellant was found grievously injured and there is no evidence that the injuries on the person of the appellant as recorded in his MLC Ex.PW-5/A could be self inflicted.
18. The submission appears to be attractive but ignores the fact that Const. Paramjit Singh PW-13 has not stated that the door leading to the balcony was locked from within the flat. He has only deposed that the door leading to the balcony was broken. It is true that he has not clarified whether the door was found locked from the balcony side or from the side of the room. But, meaningfully read, it is apparent that what Paramjit Singh intended to convey is that the balcony door was locked from the side of the balcony. In this context we may note that the appellant has not raised a defence, much less explained while being examined u/s 313 Cr.P.C., that somebody else came and assaulted the lady of the house and himself. Under the circumstances, the appellant cannot predicate a submission that somebody else has committed the offence. The plea that there is no evidence of the injury on the appellant being self inflicted we may note that at page 43 of the Trial Court record of Sessions Case No.

125/2001 there exists an application dated 17.5.2001 by the investigating officer addressed to the CMO of DDU Hospital under the caption ?Subject ? request regarding taking of blood sample and opinion regarding injuries of unknown person.. On the application Dr. Surender Sehgal has opined: ?there is no evidence to suggest that the injury cannot be self inflicted. Blood sample to be provided. Thereafter Dr. Surender Sehgal has appended his signatures. The relatable testimony of the investigating officer, Insp. R.L. Gulati PW-20 is as under:

On 17.5.2001 I moved an application to the CMO DDU Hospital for taking the blood sample of the accused. On that day Duty Const. Kanwar Singh had produced one sealed blood sample and one sealed slide of blood sample along with one sample seal of CMO DDU Hospital which were taken into possession vide memo Ex.PW-15/A.... On 17.5.2001 as per the endorsement of the Dr.

19. It is apparent that there is an omission to record what was correctly stated by the witness. The last sentence noted hereinabove ends abruptly. The witness has clearly referred to his application dated 17.5.2001 which is at page 43 of the Trial Court Record and has also referred to an endorsement of the doctor. While recording the testimony the exhibit mark has not been put on the application and the endorsement by the doctor concerned thereon has not been exhibited.

20. In view of the testimony of the investigating officer, it is apparent that the application and the endorsement thereon at page 43 of the Trial Court Record is the subject matter of the testimony and hence we hold that there is good evidence on record that the injuries on the person of the appellant could possibly be self inflicted.

21. Ignoring the application in question and the endorsement thereon, suffice would it be to state that opinions of experts are evidence u/s 45 of the Evidence Act and the primary duty is that of the Court to return findings after evaluation of evidence. Commonsense has to be used by the Judges in evaluating evidence. Life's experience is as dependable as rival facts presented by parties to a litigation. The injury on the person of the appellant as per his MLC Ex.PW-5/A are three in number being a cut in the middle of neck 5 cm x 1 cm x 2 cm and 2 small incised cuts below injury No. 1. Commonsense guides us that the injuries can be self inflicted.

22. It is next urged that of the four chance finger prints lifted from the house of the deceased, two matched those of the deceased and two were of some unknown person. Conclusion drawn is that the same evidences the presence of some other person in the house.

23. The submission by learned Counsel ignores the fact that the deceased, who was of a religious bent of mind, used to have satsangs (religious discourses in her house) and obviously people used to assemble in her house. Thus, the presence of two finger prints in her house which were neither those of the appellant nor of the deceased are not facts wherefrom an inference requires to

be drawn that somebody else could have committed the crime.

24. It is next urged that as per the prosecution, robbery was the motive of the appellant, which fact is belied from the circumstance that no valuable, belonging to the deceased, was found on the person or near the body of the appellant.

25. The argument is neither here nor there for the reason the evidence on record shows that the articles belonging to the deceased were found scattered and obviously somebody had rummaged through the almirahs of the deceased.

26. It has come on record that tools used by electricians, Ex.P-2 to Ex.P-6 were lifted from the room. It has come on record that the lights of the house of the deceased were closed when cries of 'bachao-bachao' were heard outside. The entry to the house of the deceased is not a forced entry by the assailant. There are every signs of the same being a friendly entry. There is no evidence of the appellant being engaged in criminal activities. What has happened is obvious. To rectify an electrical defect in the house of the deceased the appellant made a friendly entry and unfortunately the devil in him overtook the good in him. Finding an old and an infirm lady i.e. an easy target and an opportunity to enrich himself, the appellant assaulted the deceased hoping to finish her off in seconds. His inexperience gave time to the deceased to cry for help. The appellant found the public having gathered outside. He panicked. Where was the time for him to gather the loot? This also explains the desperate act of the appellant to commit suicide.

27. We need not speculate on hypothetical arguments for the reason the evidence conclusively establishes that the flat of the deceased on the first floor had only one entry which was found to be locked from within. Inside the flat the dead body of the deceased and the injured appellant were found. If there was a third person who committed the crime then it was the duty of the appellant to so disclose. He never did so to the police. He adopted no such line of cross-examination. He did not do so even when examined u/s 313 Cr.P.C. Further, when the cries of the deceased were heard by the neighbours, they gathered on the street outside the flat and nobody saw anyone running away.

28. We find no merit in the appeal which is dismissed.