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

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Date of decision: 12th October, 2012

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CRIMINAL APPEAL.100/2009

PURAN SINGH

..... Appellant

Through

Mr. A.J. Bhambhani, Advocate with
Ms. Nisha Bhambhani and Ms.
Bhavita Modi, Advocates.

versus

STATE

..... Respondent

Through

Mr. Sanjay Lao, APP.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE S.P.GARG

SANJIV KHANNA J. (Oral)

In this first appeal, Puran Singh impugns his conviction under Section 302 of the Indian Penal Code, 1860 (IPC), for murder of his wife Babita, vide judgment dated 11th April, 2007, passed in S.C.No. 32/2005, arising out of FIR No.418/2004, Police Station Farsh Bazar. By the order on sentence dated 13th April, 2007, he has been sentenced to imprisonment for life and fine of Rs.2,000/-. In default of payment of fine, he has to undergo rigorous imprisonment for six months.

2. There is no eye witness in the present case and the prosecution relies upon circumstantial evidence.

3. The homicidal death of Babita stands proved from the testimony

of Dr. K. Goyal (PW-2) who had conducted the Post Mortem of Babita, aged 40 years, on 7th December, 2004 at about 2.45 P.M. PW-2 stated that rigor mortis had passed off and post mortem staining was inconspicuous due to decomposition. She had further observed as under:-

“.....Conjunctiva suffused with hemorrhagic area, cornea was hazy, mouth was partly open, tongue was intact, nails were dark bluish, blood/tinted discharged from nose and mouth. Fecal discharge was present. There was whitish, dry, sticky material deposited around vagina. The following injuries were found:

1. Diffused bruising over tip of nose, both alar sides, both lips bruised orally against the teeth as well as externally with laceration of lower lip about 1.25 cm. long on the left side.
2. Coalesced contused abraded area 5.5× 3 cm transversely placed in front of neck, midline and surrounding area both sides of neck on and above apple of Adam. Also multiple small curved scratch marks resembling nail marks irregularly placed on both sides front of neck upper part of sizes between .6 to .9 cm. The colour of skin above and below the injuries is much darker.
3. Diffused bruise 2.5× 1.5 cm. over middle front of right forearm 2×1.5 cm. over upper front of left forearm and 3×2 cm over middle and lateral of right arm.

Internal examination:

Scalp tissues and skull bone were intact. Menninges were intact. Brain matter intact but so softened due to decomposition process. Base of skull was also intact.

On reflection of skin of neck, massive subcutaneous and platysmal bruising seen over front of neck both sides. Deeper neck muscles also bruised with diffusion of liquid/blood in neck layers. Decomposition changes also seen in soft

tissues. There was inward fracture subluxation of right greater conua of thyoid with massive bruising. Thyroid cartilage, cricoids cartilage and trachea was intact. Epiglottis and larynx were bruised. Tracheal mucosa showed sings of early decomposition with little sero sanguinous discharge in trachea.”

4. PW-2 opined that cause of death was asphyxia, as a result of combined impact of throttling (manual strangulation) and smothering. All injuries were ante mortem in nature. Injury No.1 was caused by grip pressure over nose and mouth. Injury No.2 was consistent with manual grip over the neck. Injury No.3 was caused by blunt force impact. Time of death, as opined, was about two days from the date of the post mortem. Asphyxia was sufficient to cause death in ordinary course of nature. The Post Mortem Report was proved as Ex. PW-2/A.

5. The most important and relevant witness is Nitin Kumar Verma (PW-3), son of the appellant-Puran Singh and the deceased-Babita. He resided with his parents, at 8/27, Gurpai Mohalla, Circular Road, Shahdara, Delhi and worked in a bank. He has stated that his mother used to stitch clothes but his father was unemployed and remained in the house. PW-3 exhorted that his father used to suspect his mother, which led to quarrels and his father often abused his mother. On 5th December, 2004, he came back from work, at about 10 P.M., and did not find his mother in the house. On inquiry, his father told

him that his mother was out to attend 'kirtan' and would come next morning. Thereafter, PW-3 slept and got up at about 8.00 A.M. next morning, on 6th December, 2004, and found that his mother had still not returned. He inquired from his father and was told that he should not worry. PW-3 went to his office. He came back from the office, at about 5.30 P.M., and found that his mother had not returned till then. He again inquired, from his father, but did not get a satisfactory reply and the appellant tried to avoid his questions. PW-3 suspected some foul play. He strictly asked questions from his father, demanding answers. His father then admitted that he had murdered Babita and had confined the body inside the room. The room was locked from outside since 5th December, 2004. PW-3 informed the police through a telephone. Police officials came at the spot and the locked room was opened. Dead body of Babita was found, lying on a plank in the room, covered with a blanket and a bed sheet. Police recorded PW-3's statement (Ex.PW3/A) and he identified his mother's dead body. Crime Team conducted the investigation and a photographer was called, to take photos, at the crime spot. Evidence in the form of broken bangles, handkerchief, bed sheet lying on the plank, pillow, blanket etc., was seized. The appellant was interrogated and he made a disclosure statement (Ex.PW3/B). We may note that there was no

new recovery subsequent to the disclosure statement and, therefore, it was not relied upon and is ignored.

6. PW-3 was cross-examined by the appellant. In the cross-examination, he admitted that, when he had left the house on 5th December, 2004, at 4.00 P.M. both of his parents were present at home. On 5th December, 2004, he had not gone to the office. He admitted that there were two other tenants, namely, Mastan and Om Prakash in the house. On 5th December, 2004, when he returned home, at about 10 P.M., his father was present in the house. He inquired, from his father, about the place where his mother had gone, to attend 'kirtan', but it was not disclosed to him. On the said date, he slept without having dinner. On 6th December, 2004, he left for office without taking breakfast. He had inquired from his mother's friend Lata, in the night of 5th December, 2004, as well as the next morning. She told him that his mother had not visited her during this time. He averred that his parent quarreled and the matter was even reported to the police. Once, the police had taken PW-3's father because his father had beaten his mother. On 6th December, 2004, PW-3 came home at about 5.30 P.M. The key of the room, which was locked, was kept by the appellant. PW-3 had contacted the police from the STD booth of his uncle Shashi Kumar Sharma. He told his uncle about the confession made by the appellant. Police reached the house at about

7.30-8.00 P.M. The appellant was sitting in another room and made no attempt to run away. The police recorded statement of PW-3, at about 8.45 P.M. on the spot itself. PW-3 admitted that he knew Praveen Gadariya, who resided near their house. However, Praveen Gadariya was not on visiting terms with PW-3 and his mother-Babita. PW-3 stated that he and his mother had never visited Praveen Gadariya's house. He denied the suggestion that there was money transaction between him, his mother and Praveen Gadariya. He denied the suggestion that Praveen Gadariya had committed murder of his mother and had falsely implicated his father.

7. Appellant had the room keys and, as per PW-3, the same was handed over to the police for opening the room. The aforesaid fact is corroborated by ASI Khursid Ali (PW-13), who was posted at police station Farsh Bazar on emergency duty from 8 A.M. to 8 P.M. He had received DD No.26A (Ex.PW11/A) and, on receipt of the same, he, along with Constable Chander Bhan (PW-4), reached at the spot i.e Gurai Mohalla. There he met Nitin Kumar Verma (PW-3) who told that his mother had been confined by his father in a room. Room was found locked and PW-13 opened the lock after obtaining keys from the appellant. On entering the room, they found that there was a body lying on the plank, covered with a blanket. On removing the blanket, they found a lady's dead body, identified by PW-3 to be his mother's.

In the mean time, SHO, along with other police staff, reached at the spot and crime team was called.

8. SHO, Inspector Satyavir Singh (PW-14) has stated that, on 6th December, 2004, he had reached Gurai Mohalla after receiving information recorded in DD No.26A (Ex.PW-11/A). He had seen the dead body, in a pool of blood, which was covered by a blanket. Statement of Nitin Kumar (PW-13) was recorded, photographs were taken and incriminating materials were seized from the spot. Constable Vijay Pratap (PW-5) was along with Inspector Satyavir Singh and has deposed on similar lines.

9. Constable Chander Bhan (PW-4) went to the spot, along with ASI Khurshid Alam (PW-13). He has stated that, on 6th December, 2004, he was posted as a Constable, at police station Farsh Bazar and, at about 7.15 P.M., the Duty Officer handed over copy of DD No.26A to PW-13. He joined investigation with PW-13 and both of them went to the house where alleged crime was committed. Nitin Kumar Verma (PW-3) was found crying outside the house. PW-3 informed the police that he suspected that his father had murdered his mother and confined the body in a room. The room was locked from outside. There appears to be slight discrepancy in the statement made by PW-4 and other witnesses as to whether the key of the room was found inside the house or the same was given by the appellant, but this does not dent or

cast doubt about the prosecution case. After opening the door, they found that something was lying covered with a blanket on the plank. After removing the blanket, they found dead body of a lady, which was identified by PW-3 as that of his mother. The face and neck of the dead body had blued and blood was seen on the nose and mouth. Investigation was done and incriminating materials were seized. Photographs of the spot have been proved by Constable Ramesh Kumar (PW-6).

10. Deepak Verma (PW-9) is brother of the deceased-Babita. He has stated that Babita had told them about her husband's harassment. Similar statement has been made by Pradeep Verma (PW-10), the deceased's younger brother.

11. DD No.26A was proved by Head Constable Rajender Singh (PW-11) who had received telephone call from Nitin Kumar (PW-3).

12. In the present case, son of the appellant and the deceased, has made a clear statement, implicating his father. He stated that his father had made an extra judicial confession and, on this basis, dead body of Babita was found lying on a plank in the room. Prior to that, on 5th and 6th December, 2004, false and wrong information was given to PW-3 that she had gone to attend a 'kirtan'. The appellant finally told PW-3 that he had murdered Babita and PW-3 informed the police. When the police reached, the door of the room was opened, dead body was found

and the appellant was arrested, at the spot itself.

13. The appellant, in his statement under Section 313 Code of Criminal Procedure, 1973 (Cr.P.C.) has accepted that he, along with his wife Babita and son Nitin Kumar Verma, resided at 8/27, Gurpai Mohalla, Circular Road, Shahdara, Delhi. The appellant denied other suggestions, put forth in the questions, or stated that he did not know. In the end, he stated that he is innocent and has been falsely implicated in the case. He professed that, in 1998, he had met with an accident which made him go in coma. He recovered after four years and, on his return from the hospital, he observed that his wife, deceased Babita, had illicit relations with Praveen Gadariya. He objected to this but the two did not pay any heed and continued with their relationship. He alleged that four persons, sent by Praveen Gadariya, attacked him but the police did not lodge his report. He purports that his son, Nitin Verma (PW-3), has falsely implicated him because PW-3 never liked that the appellant objected to the deceased Babita's relationship with Praveen Gadariya.

14. After due scrutiny of these statements and other evidence put forth above, we do not think that the trial court has erred in holding that the appellant is responsible for homicidal death of Babita.

15. Appellant's counsel submits that the case is covered, by the fourth exception to Section 300 IPC, as it is a case of a sudden quarrel,

in the heat of passion without pre-meditation. Learned counsel submits that the appellant did not act in a cruel or unusual manner. He submits that, as per the explanation, it is immaterial in such cases, which party provoked or committed the first assault.

16. We have considered the aforesaid contentions, but do not find that the fourth exception to Section 300 IPC is applicable in this case. It has come on record, in the cross-examination of PW-3, the deceased and the appellant often quarreled and police was called, at least, on one occasion when the appellant had beaten his wife. The appellant, in his statement under Section 313 Cr.P.C., has alleged that his wife was having illicit relations with a third person. Statement of PW-3 reflects and indicates the said position. There is no suggestion, in the statement of the appellant recorded under Section 313 Cr.P.C., to show that the appellant had strangulated his wife because of a sudden fight. The Post Mortem Report (Ex.PW-2/A) refers to several injuries suffered by the deceased. The details of the injuries have already been referred to above. Dr. K. Goyal (PW-2), in his testimony, has stated that Injury No.1 was caused by grip pressure over nose and mouth. Injury No.2 was consistent with manual grip over the neck and Injury No.3 was caused by blunt force impact. Moreover, the conduct of the appellant, thereafter, to lock and confine the dead body in another room and not inform his son Nitin, immediately, is an indicator that the

appellant had acted in a pre meditated manner. The appellant was medically examined by Dr. Manoj Kumar (PW-1). PW-1 found that the appellant had multiple abrasions over abdomen and chest of small dot shaped to linear shape of 0.1 cm to 3/4 cm due to nail bite. He found a small abrasion of 0.5×0.5 cm on left side of front of nose and old CLW of 1.5×1.5 cm. over lower lip on left side. Detailed MLC of the appellant was proved as Ex.PW-1/A. This possibly indicates that struggle and fight was put up by the deceased before her death, when she was being strangled.

17. In these circumstances, we are not inclined to accept the plea, of the appellant's counsel, that the conviction under Section 302 IPC should be converted into one under Section 304, Part-II.

18. The conviction of the appellant, under Section 302 IPC, and sentence of life imprisonment are upheld. However, we accept the prayer, raised by the learned counsel for the appellant, for reduction of the sentence, in default of payment of fine. In case the appellant does not pay fine, he shall undergo simple imprisonment for one month.

SANJIV KHANNA, J.

S.P. GARG, J.

**OCTOBER 12, 2012
NA/VKR**