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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ Crl.L.P.No.231/2012 and Crl.M.A.No.5665/2012

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Date of decision: 4th September, 2012

STATE

..... Petitioner

Through : Ms. Ritu Gauba, APP.

versus

MANMOHAN SINGH

..... Respondent

Through : None.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE J.R. MIDHA

GITA MITTAL, J. (Oral)

Crl.M.A.No.5665/2012

Delay in filing the leave petition is condoned. This application is allowed.

Crl.L.P.No.231/2012

1. The instant petition under Section 378(4) of the Cr.P.C. has been filed seeking leave to appeal against the judgment dated 7th August, 2009 passed by the learned Additional Sessions Judge in S.C.No.56/01 acquitting the respondent of the charge of commission of offence under Sections 302/309 of IPC for which he stood trial.

2. Information was stated to have received by the Police Station Keshav Puram at about 7:45 am by a lady constable – Mukesh

from the PCR of a quarrel at C-7/247, Lawrence Road, Delhi which was recorded as DD No.2A (Ex.PW16/A). It is in evidence that the very first information regarding the incident was given to the police control room by one Sharanjeet informing the police that one person having a muffled face at about 5:30 am had come after jumping a wall and caused the incident with a kirpan.

3. Pursuant to receipt of the telephonic information, PW31 – S.I. Mange Ram had proceeded to the spot where he had found the respondent – Sardar Manmohan Singh in an injured condition. His wife – Smt. Amarjeet Kaur had already expired by the time the police reached there. The respondent was taken to the hospital by the PCR.

4. D.D. No.2A was handed over to Inspector Sita Ram Meena who with Head Constable Nagender Kumar left the police station for the spot. Head Constable Nagender Kumar was left to protect the spot while Inspector Sita Ram Meena with Constable Sanjay Singh proceeded to the Hindu Rao Hospital and collected the MLC of the respondent. On account of pain, the respondent Manmohan Singh was unable to speak and his statement could not be recorded. No eye-witnesses were found in inquiries from the neighbourhood. The FIR No.159/01 was registered under Sections 302/307 of the IPC. After investigation, a chargesheet was filed under Sections 302 and 309 of the IPC. A charge was framed under these sections on 5th February, 2004 against the respondent. In support of its case, the prosecution examined 37 witnesses in the trial. The incriminating circumstances were put to the respondent under

Section 313 of the Cr.P.C. which he denied.

5. It is in evidence that the informant Sharanjeet had given his telephone number in the information given to the police control room. The police however, took no steps at all to verify the above information given by Sharanjeet nor was he examined as a witness. In this regard, the testimony of PW-11 – Ashish, a neighbour of the respondent and the deceased deserves to be mentioned. PW-11 has deposed that on 8th May, 2001 when he was present in the house, an aunty who lived in his neighbourhood had told him that the respondent was crying and his clothes were blood stained. PW-11 stated that at his request, his friend had telephoned the police from his telephone. PW-11 also deposed that the respondent was at that time drenched in blood and was requesting that the police be called.

6. Instead, the prosecution set-up a case that the respondent was responsible for commission of offence imputing the motive to him to kill his wife because she had failed to give birth to any child as well as his weak financial position. In order to establish this motive on the part of the respondent to murder his wife, the prosecution examined brothers of the deceased, PW-1 – Gurcharan Singh Oberoi and PW-8 – Sangat Singh; PW-2 – Sudershan Kaur (wife of PW-1); PW-3 – Sohan Singh (cousin brother of the deceased) and PW-10 – Harminder Singh. It is in the testimony of PW-1 that the deceased was married to the respondent either in the year 1981 or 1983 whereas in his statement under Section 313 of the Cr.P.C. the respondent disclosed that he was married to the

deceased in the year 1978. Therefore, the deceased and the respondent were married for a long period of over 23 years before the unfortunate incident.

7. There is no evidence at all that there was any acrimony between the deceased and the respondent. No evidence of acrimony for the reason that she had been unable to bear any child has been led. Even the other relatives of the deceased do not make any statement to this effect. In this background, the learned Trial Judge has rightly concluded that failure to bear child could not have been a motive for the respondent to kill his wife.

8. The second leg of the prosecution case on motive is his alleged weak financial position. In this regard, PW-1 – Gurcharan Singh Oberoi claimed that there used to be disputes in the house and that the respondent used to request him for financial assistance which he had also rendered. This witness failed to give any details in terms of the date, month or year when the demand was made and the assistance was rendered by him. Though PW-1 was the brother of the deceased, he was not even aware as to where his sister was living. In his cross-examination, he claimed to have met the deceased two years before her death at Patiala when she had visited him and disclosed the reasons for differences with the respondent. However, this testimony is contradicted by the testimony of his wife PW-2 – Smt. Sudershan Kaur who stated that they had met the deceased about 13 to 14 years ago at the time of the death of her son. The learned Trial Judge had concluded that if the deceased had actually visited Patiala two or three years before her death, it

was not possible that she did not meet PW-2 who was her sister-in-law and, therefore, PW-1 was disbelieved on this aspect. PW-2 has further stated that the deceased made no complaints about her husband nor did she have any information about disturbances in her life. PW-2 denied that she had made any statement to the police that the respondent had killed his wife or unsuccessfully tried to commit suicide.

9. The testimony of the other brother, PW-3 – Sohan Singh is also equally vague. He gave no details about financial conditions of the respondent and vaguely refers to request from the respondent for financial assistance which he failed to particularize. PW-8 – Sangat Singh's testimony has been carefully analyzed. It equally reflects that he had barely any association with the deceased or the respondent and had no knowledge about their affairs.

10. So far as PW-10 – Harminder Singh is concerned, it is in evidence that he was a property dealer who was exploring the possibility of the respondent selling his house to him. The respondent in his statement under Section 313 of the Cr.P.C. has stated that in fact it was PW-10 – Harminder Singh who asked him to sell the flat to PW-10 and shift somewhere else but had he refused to sell his house. The learned Trial Judge has observed that PW-10 appear to be an interested witness. The respondent had also denied that his financial position was weak or that he had any differences with his wife on this score. He has explained that he was dealing in spare parts which he was sending to his brother in Bombay.

11. So far as the relatives of the deceased who testified against the respondent are concerned, it was observed that they were not even on visiting terms with the deceased and there was no closeness with her. The learned Trial Judge has observed that the resentment of the respondent with the unconcerned and indifferent relatives of the deceased is manifested from the fact that he turned away when they visited the hospital after the incident.

12. After a detailed analysis of the evidence on record, the learned Trial Judge has held that there is no evidence of any motive being nurtured by the respondent to kill his wife.

13. The prosecution has examined PW-7 – Rajni Singhal; PW-11 – Ashish and PW-12 – Ajay Maan (neighbours of the respondent and the deceased). They did not give evidence of any quarrels or difference between the respondent and the deceased on any count. The learned trial court has noticed this position. Absent any evidence which would persuade us to take a contrary view, we are unable to arrive at a different conclusion.

14. So far as the spot is concerned, PW-18 – Head Constable Dhanbir Singh and PW-36 – Head Constable Nagender Kumar were the first police officials who inspected the same. They had seen the deceased Amarjeet Kaur lying in the bed with bleeding injuries and clutching hairs in her hands. One kirpan and its cover were also lying on the bed sheet.

15. The forensic examination of the finger prints on the kirpan or its cover was inconclusive as the prints were smudged and unfit and no opinion could be given regarding them.

16. The prosecution has claimed to have seized a hammer and an iron rod from the spot. The seizure of these articles from the spot has been doubted by the learned Trial Judge for several reasons. Amongst others, it has been found that no finger prints have been lifted from both these articles. The learned Trial Judge has also found that these were not at the spot on the initial visit of the Investigating Officer and have not even been mentioned. It has also been found that both PW-18 and PW-36 had left the spot unguarded for some time.

17. The accused has explained that a person with a muffled face had entered the house at 5:30 am who had caused the injuries to his wife and when he came out of the toilet, he resisted the attack resulting in the injuries suffered by him. In his statement, the respondent denied the prosecution case and submitted that he had been falsely implicated. He admitted that the kirpan belong to him which he used to keep under his pillow at night. He stated that no iron rod or hammer was lying on the floor near the bed when he was removed to hospital by the police. The respondent also stated that one person having a muffled face had attacked them. He denied any disputes with his wife over her failure to bear a child or on account of his financial position and that he was sending spare parts to his brother at Bombay. He also stated that PW-10 – Harminder Singh, a property dealer had asked him to sell his house to him but he had refused to do so.

18. The learned Trial Judge has doubted the recovery of these articles. We have also not been persuaded to take a different

conclusion.

19. A material circumstance which has led to the outcome of the case is recovery of hairs from the left hand as well as the right hand of the deceased. The prosecution has also taken samples of the hairs of the respondent. The hair recovered from the hands of the deceased as well as the respondent's hair sample were sent for forensic examination. As per the forensic report (Ex.PW14/A), it was opined that the hair recovered from one hand were that of the deceased herself. However, the hair recovery from the other hand matched neither those of the respondent nor of the deceased. The same clearly suggests the existence of the third person. Unfortunately this aspect of the matter has not been investigated at all.

20. The respondent also suffered injuries in the incident on 8th May, 2001. It is the testimony of several witnesses that he was bleeding extensively and his clothes were drenched in blood. He was removed to Hindu Rao Hospital by S.I. Mange Ram and was discharged from the hospital on 10th May, 2001. It appears that thereafter on 11th May, 2001, the prosecution has sought an opinion with regard to his injuries. The doctor opined that the injuries were in the phase of healing and appears to be self-inflicted. PW-25 – Dr. C.B. Dabas from whom this report was sought has in his cross-examination stated that he was not the doctor who had examined the respondent when he was taken to the hospital. The report has been obtained three days after the incident. This doctor has observed that at that time the injuries were healing. The time of

healing varies from person to person. The learned Trial Judge has, therefore, found it unsafe to rely on the opinion of the doctor on consideration of the entire evidence led on record. We see no reason to take a contrary view.

21. It is trite that leave to appeal against a judgment of acquittal is not to be granted merely because a view different from the one taken by the learned trial judge is also possible. The grant of leave under Section 378(4) of the Code of Criminal Procedure is a serious matter.

22. In the instant case, there is no reliable evidence forthcoming on the trial court record to support the case of the prosecution on any level. The prosecution failed to investigate or examine the evidence with regard to the intruder who attacked the deceased and is claimed to have injured the respondent.

23. For all these reasons, it has to be held that the finding of the learned Trial Judge that the prosecution failed to establish the charges against the appellant beyond reasonable doubt and the acquittal of the respondent have to be sustained.

This petition is accordingly dismissed.

GITA MITTAL, J

J.R. MIDHA, J

SEPTEMBER 04, 2012

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