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

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CRIMINAL APPEAL NO.733/2011

Date of decision: 27th November, 2012

NARESH Appellant
Through Mr. Ajay Verma, Advocate.
versus

STATE (GOVT. OF NCT DELHI) Respondent
Through Mr. Sanjay Lao, APP.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE S.P.GARG

SANJIV KHANNA, J. (ORAL)

Naresh, the appellant herein, stands convicted under Section 302 of the Indian Penal Code, 1860 (IPC, for short) for murder of his wife-Reena and has been sentenced to life imprisonment with fine of Rs.5,000/-. In default of payment of fine, he has to undergo simple imprisonment for three months.

2. The undisputed factual position is that the appellant got married to the deceased Reena on 21st March, 2006. Reena died on 11th May, 2006 in her matrimonial home at C-68, Raja Vihar Badli, Delhi. The appellant does not dispute that he was present at the aforesaid property in the night intervening 10th and 11th May, 2006.

3. Homicidal death of Reena stands established from the testimony of Dr. Upender Kishore (PW-9), Assistant Professor, Safdarjung Hospital, who had conducted the post mortem examination on 13th May, 2006. Reena at that time was 19 years of age. On general examination, PW-9 had noticed as under:-

“(ii) Face was congested, petechial hemorrhages present over the forehead and cheek, greenish discolouration present in the right iliac fossa, marbling present, neck circumference 33 cm, rigor mortis passed off, postmortem staining at the back, eyes closed, sub conjunctival hemorrhages present in both eyes, mouth partially opened, tongue protruded and caught between teeth, dried brownish in colour, serosanguinous discharged from both nostrils.”

4. Deceased also had the following external ante mortem injuries:-

- “i) Reddish bruise of six 2×1 cm present over the lower lip right side.
- ii) Reddish abrasion of size 3×3 cm present over the right side of neck 3cm outer to midline.
- iii) Multiple crescentric abrasions present in an area of 6×6 cm present over the middle front and left side of neck in the middle.
- iv) Bruise of size .5×.5 cms reddish present over the left side angle of mandible.”

5. On internal examination, PW-9 noticed that brain oedematus was congested and petechial hemorrhages were present in the parenchyma. On examination of neck structure, PW-9 found that the deceased had fracture of right cornu of head. Extravasation of blood was found at the fracture side and in the muscles of neck and base of

tongue. Both lungs of the deceased were oedematous and congested. Petechial hemorrhages were found in inter lobar surface of both lungs. All internal organs were congested. Stomach was empty and no characteristic smell was found. Dr. Upender Kishore (PW-9) opined that the cause of death was asphyxia as a result of ante mortem strangulation (manual). The detailed post mortem report was proved and marked as Ex PW9/A. PW-9 was not cross-examined and his statement went unchallenged.

6. Sanjay, a neighbour, had appeared as PW-18 before the Trial Court and, in his testimony, he has stated that at about 6.30/7.00 A.M, when he was filling water from a nearby tap, the appellant came to him and stated that his wife had expired due to Cholera (Haija). On this information, he went to the house of Raj Kumar, another neighbour, who was sleeping on the roof of his house and narrated the facts to him. Thereafter, he along with Raj Kumar and the appellant went to the house of latter and saw the dead body of Reena lying on the roof. At the request of the appellant, they brought down the dead body and laid it on a sheet, as it was a summer season. Public gathered there and, on asking of some public persons, they removed ornaments from the body of Reena. PW-18 stated that he had noticed some marks on the neck of Reena. Police came to the spot. In-laws i.e. parents and brother of the appellant also came at the spot. Thereafter, PW-18 left

the spot. In the cross-examination, PW-18 was only asked whether or not police had made inquiries and, if so, on what date. It was suggested to him that he had not brought the dead body down from the roof and had not joined investigation. These suggestions were denied. PW-18, Sanjay also denied the suggestion that he was deposing falsely at the instance of Kartar Singh, father of the deceased. Presence of the appellant, at the spot, also stands proved and established from the statement of mother, father and brother of the deceased-Reena, namely, Krishna, Kartar Singh and Rakesh, who had appeared as PW-3, 12 and 4, respectively.

7. Krishna (PW-3) deceased's mother, in her testimony, has stated that on 11th May, 2006, at about 7.30 A.M, she had received a telephone call from Randhir Singh, father of the appellant that her daughter had expired. Husband of PW-3 was serving in military and was not posted in Delhi, at that time. She, along with her two sons, went to the house of the appellant, at Samaypur Badli, and found that her daughter had expired. A lady by the name of Lata, from the neighbourhood, met them and told her that Reena was murdered by the appellant. At this stage, we may record that the in-laws of Reena, namely, Randhir Singh, Suresh Kumar and Angoori Devi were also prosecuted under Section 498A and 304B/34 IPC, but they have been

acquitted. The State has not preferred any appeal against their acquittal. The parents of Reena have also not filed any appeal.

8. Rakesh @ Monu (PW-4) deceased's brother has made a similar statement. He has stated that when he reached at the spot, dead body of his sister was lying in the verandah. He noticed blood in the nose of his sister and strangulation marks on her neck.

9. Head Constable Jagpal Singh (PW-11) has proved the PCR form marked Ex. PW11/B which records that, at about 11.20 hours on 11th May, 2006, a telephone call was received from one Monu number 55547354 that his sister had been strangled to death at C-50, Raja Vihar Colony, behind Badli Industrial Area, Delhi. The form also records the alleged confession made by the appellant but same is inadmissible and has not been taken into consideration by us. It has to be ignored.

10. SI Chander Prakash (PW-13) was marked and asked to investigate DD No.34B (Ex. PW 13/A), which was recorded after the PCR form (Ex PW 11/B) was recorded. PW-13 has stated that he, along with Constable Anil, reached the spot and found dead body of a female, aged about 19 years, lying in the varandha of the house. He found ligature marks and blood on the face of the body. He informed the SHO that it was a case of murder. Crime team was called which reached and inspected the spot. SDM recorded statement of deceased's

mother (PW-3) Krishna. Thereafter, case was processed and FIR was registered.

11. Inspector Niyampal Singh (PW-17) has deposed on the similar lines. He has stated that, on 11th May, 2006, when he was posted as Additional SHO at PS S.P. Badli, he had visited the spot of occurrence along with SI Chander Prakash (PW-13). At the spot, they found dead body of Reena lying on the floor of the house. Strangulation marks were visible on her neck. On inquiry, he came to know that Reena married the appellant about 2-2 ½ months back. SDM reached at the spot and prepared inquest proceedings. SDM also recorded statement of Krishna (PW-3) deceased's mother, Rakesh (PW-4) brother of the deceased and one neighbour, namely, Lata. Investigation was marked to PW-17 by the SHO. Rukka was prepared and thereafter FIR was registered. PW-17 prepared the site plan (marked Ex PW 17/B) at the spot. The dead body was sent to mortuary for post mortem. In the cross-examination, PW-17 admitted that initially he had registered a case under section 302 IPC and had not added Section 304-B IPC.

12. Inspector Nagin Kaushik (PW-19) was the Investigating Officer and assigned the duty to investigate the case. He got the scaled site plan prepared through draughtsman and also recorded statement of the father of the deceased. The case was re-investigated and statements of several other witnesses were recorded. We need not refer to any other

aspect in his statement as other accused persons, namely, Randhir Singh, Suresh Kumar and Angoori Devi have been acquitted and their role or involvement is not under examination in the present appeal.

13. From the statements of the aforesaid witnesses, it is clear that Reena had died because of strangulation, at her matrimonial house, in the night intervening 10th and 11th, May, 2006 and the appellant was present at his residence, at that time. The appellant had informed PW-18, Sanjay about the occurrence/death of Reena. He claimed that Reena had died because of Cholera (Haija). The appellant did not remove the body or take the deceased to the hospital for treatment. Presence of ligature marks, on the neck, has been mentioned by all the witnesses who had seen the dead body. At this stage, we notice the report of the crime team (marked Ex PW 14/A), in which it was recorded that the dead body of Reena was found lying in the verandha, on a mattress, and cotton had been inserted in her nostrils. It records that there were injury marks, on her neck, and some abrasions were visible. The crime team had remained at the spot from 12.30 P.M. to 1.30 P.M. The photographs of the deceased, at the site of occurrence, were taken by Constable Dalbir (PW-6). Seven photographs, marked Ex 6/8 to A14, from different angles were taken and these photographs show visible ligature and abrasion marks, on the neck. The deceased

had also bled from the mouth and nose. Cotton was stuffed in one of the nostrils.

14. The appellant, in his statement under Section 313 Code of Criminal Procedure, 1973, had stated as under:-

“Q2 It is further in evidence against you that co-accused Randhir on 11.5.2006, at about 7.30am gave a telephonic call to PW-3 Krishna that the deceased had expired. At that time, PW-12 Kartar Singh, who was serving in Army, was on duty. PW3 Krishna and PW-4 Rakesh after receipt of call on 11.5.2006 at about 7.30 am regarding the death of deceased went at the house of deceased situated at Rama Vihar, Badli Industrial Area where they found the dead body of the deceased lying in verandah inside the house. At that time, PW3 Krishna and PW-4 Rakesh @ Monu noticed the strangulation marks around the neck of dead body of deceased as well as the blood near the nose. PW-8 Lata told PW3 Krishna that the deceased was murdered by all of you. The dead body was brought from the roof of the house to the verandah by PW-18 Sanjay and PW16 Raj Kumar. PW18 Sanjay also noticed some marks around the neck of deceased. What have you to say?

Ans. It is incorrect. I do not know how Reena had died. She was sleeping along on the roof and when in the morning, I had gone to fetch her tea, I found her lying dead on the cot.

Q.12 Have you anything else to say?

Ans. I am innocent and I have been implicated in this case. I was keeping properly Reena. I do not know how she expired. On 11.5.2006, I had gone to serve tea to Reena on the roof of my house and when I went on roof, I found Reena lying dead. I never made any demand from Reena and her parents. I was not having any relations with Ashu.”

15. What is noticeable, from the aforesaid statement of the appellant, is that the appellant accepts that his wife has expired but claims to be unaware as to how and what had happened. In view of PW-18's statement, it is difficult to accept appellant's stance. The appellant does not purport that the deceased had committed suicide by hanging herself and neither was there any material or evidence which suggests this as no material like rope etc. was recovered. Even PW-18, when he reached the spot, did not find any material to suggest the same. A third party or outsider's involvement is completely ruled out. The ornaments, which the deceased was wearing, were not touched as are clearly visible from the photographs.

16. In *Prabhakar Jasappa kanguni v. State of Maharashtra*, AIR 1982 SC 1217, in similar circumstances, the Supreme Court had held that the accused therein was guilty of murder caused by strangulation observing as under:-

“The other circumstances listed above had also been finally established, once circumstance (1) is established, then, taken in conjunction with the other circumstances, particularly the undisputed fact that at or about the time of Malti's death, no third person excepting the accused and deceased, was present in the house, it will inescapably lead to the conclusion that in all human probability, it was the accused-appellant and none else, who had murdered the deceased by strangulating her to death.”

17. The appellant being at home with the deceased was in knowledge of the special and exclusive facts and what transpired between them. In case there was any third person, the appellant would have come out and stated so. It is noticed that there was no sign of forced entry and conduct of the appellant, as set out by PW-18, shows that he is the only person involved and rules out the possibility of any third person committing murder of Reena. As already noticed above, the appellant did not take his wife to the hospital or seek any medical assistance. This conduct of the appellant is completely unnatural and cements the case of the prosecution against him. He is the perpetrator.

18. Krishna (PW-3) in her statement has delineated that the motive for commission of the offence was that appellant was unhappy with the marriage. She has stated that her daughter had told her that the appellant was not keeping her well as the marriage was not as per his wishes. Deceased Reena had told her that the appellant had a love affair with one Ashu, sister of her sister-in-law (Bhabi). Similar statement had also been made by Rakesh (PW-4), brother of the deceased. The appellant, in his statement under Section 313, has stated that Reena was suspicious about his relations with Ashu, but he was not having any relations with Ashu. It is apparent from the aforesaid that there were disputes and differences between the appellant and deceased.

19. In conclusion, keeping in view the conduct of the appellant and nature of injuries on the body of the deceased, it can be said that the appellant is the only person, who had committed the murder.

20. In view of the aforesaid, we find that the appellant has been rightly convicted. The conviction of the appellant under Section 302 IPC and the sentence awarded are upheld. The appeal is dismissed.

SANJIV KHANNA, J.

S.P.GARG, J.

NOVEMBER 27, 2012
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