

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

**RESERVED ON : 1st October, 2012.
DECIDED ON : 12th October, 2012.**

CRL.A. 892/2011

MILAN SINGH Appellant
Through : Ms.Manjusha Wadhwa, Advocate.

Versus

STATE Respondent
Through : Mr.Sanjay Lao, APP for the State.

**CORAM:
MR. JUSTICE SANJIV KHANNA
MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. The present appeal is directed against the judgment dated 08.02.2011 and order on sentence dated 15.03.2011 of learned Additional Sessions Judge in Sessions Case No.04/09 by which the appellant-Milan Singh was convicted for committing offence punishable under Section 302 IPC and sentenced to undergo imprisonment for life with fine. The facts giving rise to the present appeal are as under:

2. Milan Singh and Sunita (since deceased) were living together in a house in A-Block, Kachhi Colony, Agar Nagar, Prem Nagar-III. Milan Singh used to ply rikshaw. They had one son aged about one year. On 16.07.2005 at about 12:30 P.M., Sunita was murdered in her house. Information was conveyed to the police station and Daily Diary (DD) No.16/A (Ex.PW.20/A) was recorded at 02:05 P.M. at Police Post Prem Nagar. The investigation was assigned to Inspector Meer Singh Nehra (PW-16) who reached the spot. Sh.Kedar Nath, Sub Divisional Magistrate recorded the statements of Shakal Dev and Shrawan Kumar, father and brother of the deceased respectively. Inspector Mohd.Iqbal sent the rukka for lodging First Information Report under Section 302 IPC. The Investigating Officer summoned the photographer who took the photographs of the house and the body. Crime team prepared its report. One nilon 'rope' of light green colour lying at the spot was seized vide seizure Memo (Ex.PW-3/E). The body was sent for post-mortem. Dr. Ashish Jain (PW-14) conducted post-mortem examination of the body. The accused was arrested at the spot. The Investigating Officer recorded statements of the witnesses conversant with the facts and after completion of the investigation submitted a charge-sheet against the accused for

committing offence punishable under Section 302 IPC. The accused was duly charged and brought to trial.

3. After appreciating the evidence and documents on record and taking into consideration the rival submission of the parties, the Trial Court convicted the accused under Section 302 IPC. Being aggrieved, the appellant has preferred the appeal.

4. Learned counsel for the appellant assailed the findings of the Trial Court and urged that it did not appreciate the evidence in its true and proper perspective and fell into grave error in relying upon the testimony of PWs 1 and 3 who were interested witnesses. The Trial Court, urged the counsel, did not notice vital discrepancies and contradictions in the testimonies of the witnesses. The accused was not present at the spot at the time of incident and had gone to ply rikshaw in the morning at 8:00 A.M. When the police reached the spot, admittedly, the accused was not present there. He returned to the spot after Shankar Lal informed him about the death of his wife. She further pointed out that there was no legal evidence to prove objectionable relationship with Suraj Kumari. She was not examined by the police. It was a case of suicide. PW-3 (Shrawan Kumar) was not a witness to the incident and in his deposition before the court, he did not claim to have seen the accused strangulating the

deceased. The accused had no ulterior motive to murder his wife as they were living happily with a male child. After he was arrested and implicated in the case, no care of the child was taken and parents of the deceased misappropriated all his household articles.

5. Learned APP while supporting the judgment urged that it does not call for interference. The prosecution has established beyond reasonable doubt by direct and circumstantial evidence that the accused was the perpetrator of the crime. There was motive for the accused to eliminate the victim as she used to object his illicit relation with Suraj Kumari. PW-2 (Sheela Nath Jha), an independent public witness, specifically deposed on this aspect. The accused did not like his exposure in the public and nursed a grudge against of the victim. Relationship of PWs-1 and 3 with the deceased is not a factor to discard their otherwise cogent testimony.

6. We have considered the submissions of the parties and have examined the Trial Court record.

7. Daily Diary No.16 (Ex.PW-20/A) was recorded at police post Prem Nagar, Police Station, Sultan Puri at 02:05 P.M. on 16th July, 2005 on getting information about the death of a person in a quarrel. Crime team visited the spot and submitted its report (Ex.PW9/A) in which modus

operandi of death was described as 'strangulation'. PW-8 (Kedar Nath), the then SDM, Saraswati Vihar, recorded statements of Shrawan Kumar and Shakal Dev Singh, brother and father of the deceased respectively. In their statements made to PW-8 (Kedar Nath, SDM Saraswati Vihar), PW-1 (Sakal Dev Singh) and PW-3 (Shrawan Kumar) leveled allegations against the accused for committing murder of the deceased-Sunita by strangulation. PW-5 (Inspector Mohd.Iqbal) sent the rukka through Constable Suresh for lodging First Information Report under Section 302 IPC. Inquest proceedings were conducted and the body was sent for post-mortem. PW-14 (Dr.Ashish Jain) conducted post-mortem examination of the body and was of the opinion that the cause of death was asphyxia subsequent to ligature pressure over neck structure. He was further of the opinion that ligature mark could be caused by rope or other similar material shown to him on 11.08.2005. The reports are Ex.PW-14/A and 14/B. The expert opinion about the cause of death was not challenged in the cross-examination. Nothing was suggested to him that the death was due to suicide. Apparently, it was not a case of natural death. It was heavily for the accused to prove his plea that the deceased had committed suicide. The appellant was present with the deceased at the time of the incident. No suggestion whatsoever was put to PW-1 (Sakal Dev Singh)

and PW-3 (Shrawan Kumar) in their cross-examination that the death was due to suicide committed by the deceased. The accused did not offer any circumstances/reasons forcing the deceased to take the extreme step. She was married to the accused about four years back and had a male child out of the wedlock. The accused claimed that relations with the deceased were cordial and she was living happily in the matrimonial home. In that eventuality, there was no compelling reasons for the accused to commit suicide leaving the kid in lurch. The accused did not suggest how and in what manner she committed suicide. The photographs (Ex.PW-10/A to 10/H) do not depict that overt act to infer suicide. Even in the statement recorded under Section 313 Cr.P.C. the accused did not plead that it was a case of suicide. The accused came up with this plea only when final arguments were addressed before the Trial Court. However, the aforesaid circumstances belie and negate the said plea. There is no explanation from the accused. Undoubtedly, it is a case of culpable homicide.

8. Indisputably, the accused and the deceased used to reside at the matrimonial home at A-Block, Kachi Colony, Agar Nagar, Prem Nagar-III. The accused admitted in statement recorded under Section 313 Cr.P.C. that his brother-in-law Shrawan Kumar used to sleep outside his house on and before 15.07.2005. Death occurred at the residence of the

deceased at about 12:30 noon. DD No.16/A (Ex.PW.20/A) was recorded at 02:05 P.M at Police Post Prem Nagar, PS Sultan Puri. The death was due to strangulation. There is no evidence if any stranger or third person had entered the house and committed the offence. It was for the accused to explain as to how and under what circumstances the deceased met with homicidal death. The theory propounded by him that she committed suicide deserves outright rejection.

9. PW-3 (Shrawan Kumar) in his deposition before the court affirmatively claimed that the accused was present at the time of the occurrence in the house. He deposed that at about 12:00 P.M. when he went to the house, he saw the accused in the said room. He took his nephew aged one year outside the house after his sister went to prepare lunch. The accused was present inside the house that time. When he returned and went inside the house, he saw the dead body of his sister. He noticed ligature mark on her neck and a rope was lying nearby. He also saw the accused coming out of the room. He rushed to call the neighbours but no one came there. He went to inform his father. After some time, the accused came and requested not to inform the police. He sought pardon for his mistake. In the cross-examination by APP, after court's permission, he admitted that when he returned to the house with his

nephew, he saw that the accused had put rope/string (Ex.PW-1) around the neck of his sister and was strangulating her. He raised an alarm and tried to call the neighbourers to help but none came. In the cross-examination on behalf of the accused, he explained that he had come to Delhi about ten days before the incident. He had started living at the house of his sister one day before the incident. His father was residing nearby. He was working as a baildar in a house (under construction) at a distance of 10-20 houses from the house of the accused. He denied the suggestion that on 16.07.2005 the accused had gone to ply rikshaw at about 8:00 A.M. He further denied the suggestion that he used to demand money from his sister and on that account there were quarrels between the accused and the deceased.

10. Thus presence of the appellant at the place of occurrence is established. However, the appellant did not adduce any evidence to establish his presence at any other specific place. Suggestion was put to PW-1 (Sakal Dev Singh) that after getting information from alleged Shankar, shoe maker, he (the accused) returned to the spot. However, he did not give detail particulars of alleged Shankar and did not examine him in defence. PW-16 (Inspector Mir Singh Nehra) and PW-13 (SI Dinesh) deposed about the presence of the accused at the spot. Their statements

remained unchallenged in the cross-examination. In the statement under Section 313 Cr.P.C., the accused did not take specific defence on 'alibi'. He did not elaborate as to when he had left the house or when returned to the house. He did not specify at which exact place he was present at the time of occurrence. We have no reasons to disbelieve PW-3 (Shrawan Kumar) who was categorical to depose that soon before deceased's death, the accused was present in the house. In the statement (Ex.PW-3/A) given to PW-8 (Kedar Nath), SDM, Saraswati Vihar, on the same day, he gave detail account of the occurrence. He named the accused for committing her murder. He also attributed ulterior motive to the accused for strangulating her. His statement was recorded at 4:00 P.M. PW-16 (Insp. Mir Singh Nehra) made endorsement and lodged First Information Report. There was no delay in lodging the First Information Report. PW-3 (Shrawan Kumar), deceased's brother, had no reason to falsely name the accused for the murder of his sister. He must be interested that the real culprit is brought to book. In his deposition before the court, he made minor variation and did not testify in the examination-in-chief that he had seen the accused strangulating his sister. However, when cross-examined by the learned APP, after court's permission, he recollected the facts and deposed that the accused had put the string (Ex.PW-1) around her sister's

neck and he saw him strangulating her. Further if we take the statement in chief, it is sufficient to implicate and connect the appellant as the perpetrator of the crime. The testimony of the witness remained unchallenged on material facts. No suggestion was put to him in the cross-examination that the accused was not present at the spot at that time. The law regarding the testimony of a witness who disclosed facts in the cross-examination of APP, after court's permission, has been discussed in the recent judgment of the Supreme Court in *Bhajju @ Karan Singh vs. State of M.P.* 2012 CrI.L.J.1926:

“Now, we shall discuss the effect of hostile witnesses as well as the worth of the defence put forward on behalf of the appellant/accused. Normally, when a witness deposes contrary to the stand of the prosecution and his own statement recorded under Section 161 of the Code of Criminal Procedure, the prosecutor, with the permission of the Court, can pray to the Court for declaring that witness hostile and for granting leave to cross-examine the said witness. If such a permission is granted by the Court then the witness is subjected to cross-examination by the prosecutor as well as an opportunity is provided to the defence to cross-examine such witness, if he so desires. In other words, there is a limited examination-in-chief, cross-examination by the prosecutor and cross-examination by the counsel for the accused. It is admissible to use the examination-in-chief, as well as the cross-examination of the said witness in so far as it supports the case of the prosecution. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated

as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. Section 154 of the Act enables the Court, in its discretion, to permit the person, who calls a witness, to put any question to him which might be put in cross-examination by the adverse party. The view that the evidence of the witness who has been called and cross-examined by the party with the leave of the court, cannot be believed or disbelieved in part and has to be excluded altogether, is not the correct exposition of law. The Courts may rely upon so much of the testimony which supports the case of the prosecution and is corroborated by other evidence. It is also now a settled cannon of criminal jurisprudence that the part which has been allowed to be cross-examined can also be relied upon by the prosecution. These principles have been encompassed in the judgments of this Court in the cases:

- a. Koli Lakhmanbhai Chanabhai v.State of Gujarat (1999) 8 SCC 624*
- b. Prithi v. State of Haryana :(2010) 8 SCC 536*
- c. Sidhartha Vashisht @ Manu Sharma v.State (NCT of Delhi : (2010) 6 SCC 1*
- d. Ramkurshna v.State of Maharashtra : (2007) 13 SCC 525*

11. Even if we ignore/exclude the witness's version that he had seen the accused strangulating the deceased, the fact remains that the accused was seen in the house soon before the death of the victim and during this short span none else was there to commit the crime. In *Babu*

Supreme Court observed:

“The second important circumstantial evidence the accused is that the accused and the deceased were last seen together. To put it tersely both of them slept together by retiring to the room that night. Last seen together in legal parlance ordinarily refers to the last seen together in the street, at a public place, or at any place frequented by the public. But here, the last seen together is much more than that. The last seen together here is sleeping together inside the bolted room. It is in the evidence of PW-3 and PW-6 that they had dined together and the accused and the deceased were closeted in a room at about 8:30 P.M. is undisputed and it is for the accused alone to explain as to what happened and how his wife died and that too on account of strangulation.”

12. The gap between point of time when the accused and deceased were last seen alive and the deceased was found dead is so small that possibility of any person other than the accused being author of the crime becomes impossible.

13. It is alleged that the accused was having illicit relations with Suraj Kumari residing in his neighbourhood. The deceased used to object to that relationship. The relations between the accused and deceased were not cordial on that account and the accused used to beat her. PW-3 (Shrawan Kumar) deceased's brother categorically stated that his brother-in-law was having an affair with a lady residing in the neighbourhood.

Whenever his sister objected to the said relations, the accused used to beat her. He further stated that on the night intervening 15/16-07-2005, a quarrel took place between his sister and the accused when he went to the house of the said lady and his sister raised an alarm. The accused attempted to murder his sister after bolting the room from inside and he rescued her after entering in the room by jumping the wall. He informed his father PW-1 (Sakal Dev Singh), who reached the spot. They pacified the accused. PW-1 (Sakal Dev Singh), deceased's father also, corroborated his testimony and deposed that he was informed that the accused had objectionable relations with Suraj Kumari. Crucial testimony on this circumstance is that of PW-2 (Sheela Nath Jha), Pardhan of the locality. He was approached by Sakal Dev Singh and the victim along with other residents of the locality to complain the accused's illicit relations with Suraj Kumari. He was also informed that on that account, there was a quarrel in the night. PW-2 visited the house immediately and advised him not to have any such relationship and resolve the matter amicably. He observed that the accused was very angry at that time due to his exposure in public. In the cross-examination, he elaborated that Suraj Kumari was aged 30-35 years. He denied that the accused was angry due to false allegations leveled against him. He volunteered to add

that the accused did not speak a word and the people were angry with him. There is some evidence to establish illicit relationship between the accused and another lady which was resented to or disliked by the deceased. It is certain that the bone of contention was visits of the accused to the said lady. The relations were strained on that account. It appears that the accused felt insulted after he was exposed in public and it aggravated the situation.

14. In the statement recorded under Section 313 Cr.P.C. the accused did not offer plausible explanation to the incriminating circumstances proved against him. He did not allege that due to demand of money by PW-3 (Shrawan Kumar), there used to be quarrel with the deceased. No such evidence has been brought on record. PW-3 had come to Delhi from a village only about ten days prior to the incident. Earlier, he was staying with his father. Only one day before the occurrence, he had started staying in the house of the accused. During this short period, there was no possibility of the PW-3 to demand 'expenses' from the deceased to give rise to quarrel with the accused. PW-3 himself used to work as baildar. Minor contradictions, discrepancies and improvements in the testimony of witnesses highlighted by the learned counsel for the

appellant are not significant to suspect the cogent and natural testimonies of PW-1, PW-2 and PW-3. The accused did not deny that he had not made extra judicial confession to PWs 1 and 3 and had not requested them not to report the matter to the police and to pardon him for his mistake. In any case we have not based our decision on the extrajudicial confession.

15. Considering all these facts and circumstances proved on record, we are of the view that the prosecution has established its case beyond reasonable doubt. We find no illegality in the impugned judgment of the Trial Court and no interference is called for. The appeal filed by the appellant is accordingly dismissed. Conviction and sentence is maintained.

16. Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

(SANJIV KHANNA)
JUDGE

OCTOBER 12, 2012
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