

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

**RESERVED ON: 14.03.2012
PRONOUNCED ON: 23.03.2012**

+ **Crl.A. 1501/2011, Crl. M. (Bail) 2135/2011**

RANJIT Appellant

Through: Sh. Sumeet Verma, Advocate.

versus

STATE OF THE NCT OF DELHI Respondent

Through: Ms. Richa Kapoor, APP, for the State.

**MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE S.P. GARG**

MR. JUSTICE S.RAVINDRA BHAT

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1. The appellant impugns a judgment of the Additional Sessions Judge, dated 14.05.2011 in SC No. 319/2009, by which he was convicted for the offences punishable under Sections 498-A and 302 IPC. By an order dated 07.07.2011, he was directed to undergo imprisonment for life, in respect of the offence under Sections 302/498-A IPC; he was also directed to pay fine. All sentences were to operate concurrently.

2. The prosecution had alleged that the deceased, Biva was married to Ranjit; her niece Sundri had married his brother, the co-accused Randip. It was alleged that PCR information was received on 08.08.2007 at around noon time, about the dead body of a woman, with blood oozing from the neck. The police reached the spot and confirmed the information; the body was in a room at Chungi No. 2, Ram Pyari camp, Lal Kuan. The deceased Biva had married Ranjit on 15.11.2006. The police conducted investigations, recorded statements of witnesses, collected samples of incriminating materials, and after the post mortem of the body was conducted, collected the report. Ranjit was arrested on 08.08.2007, and Randip was arrested on 09.08.2007.

3. According to the statement of Pintoo, PW-15 (the deceased's brother) at the time of their marriage, Ranjit did not demand any dowry; three months after the event, Randip got married to Sundri, the deceased's niece. Later, the accused had demanded ₹50,000/- and threatened to beat up Biva in case the amount was not paid. He also revealed that the deceased used to be beaten up regularly, and was sent back to her parental house. On 06.08.2007, PW-15 sent back Biva to her matrimonial home. Thereafter, her mother-in-law and father-in-law visited him and requested him to send her back. The police recorded the statement of one Dr. Sunita Gupta (PW-11) who said she was present with the deceased on 08.08.2007, at night when she had to deliver a child; she witnessed the accused Ranjit beating her, before the delivery of the child. She also stated that Ranjit used to beat up Biva, even in her clinic whenever she was taken there, for check up. She had witnessed her

being beaten up after the child's delivery; he stopped only when she threatened to call the police.

4. On the basis of the statements of witnesses, and other materials, the prosecution filed a charge sheet. The accused were charged with committing offences punishable under Section 304-B/498A IPC. Ranjit was additionally charged for committing the offence punishable under Section 302, IPC. Both denied guilt, and claimed trial. The prosecution relied on testimonies of 23 witnesses, besides other materials. After considering these, as well as the parties' submissions, the Trial Court held Ranjit guilty in the manner described earlier, and sentenced him to undergo various prison terms. The co-accused Randip was acquitted.

5. It was argued on behalf of the appellant, by Mr. Sumeet Verma, learned counsel that the conviction recorded by the Trial Court is based on an erroneous appreciation of evidence and consequently is untenable. It was submitted that the Court overlooked a very material and crucial circumstance, which was that according to both eyewitnesses (who saw the deceased in the premises before her death) there were other persons, viz. the appellant's mother, and the deceased's niece. Neither was examined, nor was even their role investigated. When all evidence pointed to the presence of three persons with the deceased, around the probable time of her death, the Court was not justified in singling out the appellant as the one who committed the crime.

6. Learned counsel next submitted that the Trial Court fell into error in ignoring two important circumstances. The first was that the Appellant had called the doctor to examine the deceased, soon after her delivery. If in fact

the prosecution was right in contending that he was the perpetrator of the crime, there would have been no occasion for him to have called the doctor. The second circumstance was that the appellant had gone out of his house, to buy milk – which was consistent with his version under Section 313 Cr.PC and the testimony of the defence witness, DW-1 who should have been, in fairness, be examined by the prosecution. Her presence was not in issue, and the testimony also confirmed the presence of the appellant's mother. All these showed that the appellant could not have been responsible for his wife's death when other people were at home.

7. Learned counsel next submitted that the testimonies of PWs-8 and 11 established that besides the appellant, the deceased's mother-in-law and her niece were present at home. PW-8, the midwife had initially refused to accompany him since he was drunk. She relented later when he again went back to her, seeking help. It was submitted that PW-8 confirmed that the doctor – PW-11 reached the premises 10-12 minutes after she went. She also corroborated the doctor's testimony about the accused being told not to beat the deceased or else the police would be called. Learned counsel submitted that the doctor's testimony could not be relied upon since she made improvements from the version recorded by the SDM (Ex. PW-11/A). She did not state earlier that Ranjit was in a drunken condition or that he sat over the deceased's chest and that he hit over the deceased's head with the *charpai* leg or that he had again beaten her up after the delivery. Crucially, submitted counsel, the doctor improved upon the previous statement, Ex. PW-11/A where she did not mention that Biva had expressed her apprehension that Ranjit would kill her. Learned counsel submitted that in

fact, PW-11 had told the SDM in her previous statement that Biva had not received any injury on her head or cheek when she went to see her or when she left the premises.

8. It was argued that the Trial Court's findings recorded in Para 49 that the improvements in the testimony of PW-11 were inconsequential, are baseless and untenable. The facts deposed, i.e. Ranjit sitting on Biva's chest and hitting her head etc. were a clear improvement and could not have been taken into consideration at all. Instead, the Trial Court glossed over the basic discrepancies and proceeded to hold that the witness had merely elaborated what she had stated earlier. Learned counsel argued that the Trial Court was alive to the possibility that others could have committed the crime and yet deliberately and in complete error of law trained its guns on the appellant and proceeded to convict him. Learned counsel pointed to the following observations in the impugned judgment:

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...Smothering is a deliberate intentional act committed by some person. It could not have happened by any fall. It is categorically mentioned in the post-mortem report that the death occurred due to asphyxia due to smothering. That means that the deceased was so suffocated by an external act so as to block her oxygen till she died. This is not explained by the accused at all. Though the involvement of the niece (examined as DW-1) of the deceased and the mother in law of the deceased who are stated to be have been present at that time cannot be ruled out. However, at this stage only accused Ranjit (and his brother Randip) are facing trial before me and hence I confine my observations against these accused persons. The

deceased was left in the company of the accused Ranjit by PW-8 and PW-11. She received fresh injuries after these two witnesses left. She was smothered to death after these two witnesses had left. She was left in the company of the accused by these two witnesses. Accused Ranjit fails to explain as to how the deceased sustained injuries and who smothered her to death. In these circumstances, I hold this as relevant facts pointing conclusively towards the involvement of the accused i.e. I hold that the circumstances point their finger conclusively towards the accused Ranjit that it is he and he alone who had caused the death of the deceased by smothering her and that he had also inflicted these fresh injuries on her body before her death.

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9. Learned APP argued that the earliest intimation of the crime in this case was received through the PCR intimation – Ex. PW-17/A, that the dead body of a woman was lying, at 11.58 PM on 08.08.2007. This was passed on to the concerned Police Station, i.e. Pul Pehladpur, Police Station Sangam Vihar at 12.10 PM and proved through Ex. PW-2/A. PWs-5 and 20 deposed about having gone to the spot where they found Biva’s body. The statement of PW-15 was recorded on 08.08.2007 and the FIR in this case was recorded at 05.15 PM on 08.08.2007. This was on the basis of PW-15’s statement; it was recorded by the Executive Magistrate, PW-17 – Sh. Alok Sharma. Learned counsel submitted that the testimonies of PWs-8 and 11 clearly proved that the appellant was at the spot in the premises, around the time Biva died. The Court could not ignore this vital circumstance and the appellant owed an explanation by virtue of Section 106 of the Evidence Act. Learned counsel emphasized that the Post mortem Report and the testimony of PW-16 revealed that no less than 13 ante-mortem injuries were discerned

on the dead body. The doctor had even deposed that the injuries were fresh before the death and that the time of death according to the Post mortem Report was about 30 hours from the time the procedure started. This meant that the time of death was approximately 05.00-05.30 AM of 08.08.2007. It was emphasized by the learned APP that the events were also corroborated by the testimonies of PW-11, if read with PW-8 since both consistently maintained having seen the deceased alive last around 01.15-02.00 AM in the morning of 08.08.2007.

10. Learned APP argued that in fact if the appellant had not played any role in the murder of his wife, no explanation was forthcoming why steps were not taken to report the unnatural death which had by all accounts occurred early in the morning. The police were entirely in the dark and became aware only after the incident was reported in the morning, and the investigation started. The possibility of the prosecution concocting the facts or improving the witnesses' versions did not arise in this case since the statement of PW-15 and another witness, PW-13 – the brother of the deceased – were recorded at the earliest opportunity.

11. From the above narrative, it can be seen that the police received intimation about Biva's death on 08.08.2007 at around 12.00 PM. The time of death, fixed by the Post mortem and deposed to by PW-17 was around 05.00-05.30 AM in the morning of 08.08.2007 (Ex. PW-16/A). The testimony of PW-17, Sh. Alok Sharma, the SDM concerned was that he recorded statements of Pintoo (Ex. PW-15/A); Munna (Ex. PW-13/A) as well as of Dr. Sumitra (Ex. PW-11/A) and the statement of Smt. Chironja (Ex. PW-8/A). In the cross-examination, he confirmed about having

received the intimation and reaching the spot in the afternoon, around 03.00-04.00 PM. PW-15 deposed that after her marriage with Ranjit, he and Randeep started harassing him and demanded Rs. 50,000/- a few months after the deceased's marriage. The witness refused to pay the amount since he was unable to do so. He deposed that the deceased was beaten up by the appellant and his brother; the witness brought back his sister to his house. He also stated that another sister Sundari had married Randeep; she too was given beatings and sent back to parental house. The accused went over to his place to take back the deceased; she, however, refused to return. Thereafter, the deceased's mother-in-law, and an old man went to their house and pressurised her to return with the promise that they would be treated well. They both, therefore, returned on 06.08.2007. He deposed to having received telephonic intimation on 08.08.2007, that his sister Biva had been killed. He confirmed having seen cut marks on the upper lip of his sister and also noticed her bleeding from the neck and that his statement was recorded by SDM. In cross-examination, he confirmed that his sister had always alleged that Ranjit used to beat her though he did not find any signs of injury. He also admitted that PW-17 had recorded the statement of a lady doctor.

12. The testimony of PW-8 is that she used to clean new born babies and on the night of incident, at 12.30 PM, Ranjit asked her to accompany him since she (i.e. the deceased) was in labour. He was under the influence of liquor and she did not accompany him. He went back and again requested her. This time she went with him and found that Biva, her mother-in-law and niece were at home. The deceased was fine at that time. 10-12 minutes later, PW-11 reached there. She said that Biva came out, followed by the doctor

who was telling the appellant not to give beatings to his wife and also threatening to call the police. Sometime later, Biva gave birth to a girl; the witness, PW-8 cleaned that child under the directions of the doctor and returned home after an hour. She claimed that the mother and daughter were doing fine when she left the premises. PW-11 corroborated the version of PW-8 to the extent that in her case too, she had been approached by Ranjit earlier in a drunken condition and she refused to accompany him. He again returned twice; the third time she went with Ranjit and other family members to his house around 01.00-01.15 AM. She deposed that Biva used to consult her for pre-natal treatment and also that Ranjit used to beat Biva even inside the clinic before her. PW-11 confirmed that PW-8 was in the premises along with the deceased mother-in-law, who was asked to leave the room. She claimed having seen Ranjit sitting on Biva's chest and hitting her head and alleged that she threatened to inform the police in case he continued to do so. She also deposed that at the time she was leaving the house, the deceased went-out asking her to save her life. According to PW-11, Ranjit again beat-up Biva even after she was receiving treatment while undergoing labour pains. After delivery, the co-accused Randeep took the child and kept her on a cot. She claimed that when she was leaving, Biva caught hold of her and asked her not to leave, expressing that she would be killed by the accused persons. She remained there for 1 ½ hours after which she left.

13. In the cross-examination, the appellant was able to establish that PW-11 made improvements to the previous statement recorded during the investigation by the SDM. For instance, she did not reveal in the earlier

statement that Ranjit sat on the deceased's chest and beat her over the head or that Biva went-out crying that she ought to save her or that Ranjit again beat her up. In the cross-examination, the appellant was also shown the witness's deposition that Biva had implored her to save her or else she would be killed, had not been recorded earlier during the investigation.

14. In the present case, the Post mortem reveals the following injuries on the deceased's body:

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- 1) A lacerated wound of size 2.5 x .5 cm was present on the right side of upper lip crescentic in shape.*
- 2) Swelling was seen on both the lips.*
- 3) Contusion was present over inner side of upper lip of size 2 x 1 cm.*
- 4) Contusion was present over lower lip of size .5x .2 cm on inner surface of lip.*
- 5) Also contusion was present on the upper lip right side with laceration.*
- 6) Contusion was present on the cheek left side of size 2 x 1.5 cm.*
- 7) Contusion present on the left fore arm.*
- 8) Contusion was present on the right arm.*
- 9) Contusion was present on the upper most part of the left fore arm.*
- 10) Abrasion was present on medical aspect of left fore arm.*
- 11) Contusion was present on the fore head.*
- 12) Contusion was present on the fore head above eye brow.*
- 13) Contusion was present on the left mastoid process.*

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15. The report (Ex. PW-16/A) showed 13 injuries on the body of the deceased. The doctor, PW-16 confirmed that there were signs of recent and

fresh ante mortem injuries and was of the opinion that the cause of death was asphyxia as a result of smothering. This clearly points to Biva's unnatural death. The appellant did not dispute this aspect at all. The question, therefore, was whether the Trial Court analyzed the evidence before it correctly to convict Ranjit.

16. PWs-8 and 11 gave consistent accounts about the events which occurred in the early hours of 08.08.2007. PW-8's version was not seriously contested. She deposed to having reached the premises about 10 minutes earlier to PW-11, who supervised the delivery of the girl child. PW-8 testified to having proceeded to clean the child; PW-11 stitched-up the wounds of the deceased and completed the necessary post-natal procedures. She also deposed to having been with the deceased for about 1 ½ hours. It is thus evident that both PWs-8 and 11 left the premises around 03.00 AM. The evidence also points to the presence of the appellant's mother, i.e. the deceased's mother-in-law. The deceased's sister (or niece, since PW-15 described Sundari as his sister) was also apparently at home. Although, if one examines the testimony of PW-11 and compares it with the previous statement recorded by the SDM, PW-17, there could be some dispute about the sequence of events and also whether Biva expressed her apprehension that her husband would kill her, there is no doubt that she categorically mentioned about having witnessed the deceased being beaten up earlier and even in the early hours of 08.08.2007 after the delivery of the child. Her statement, Ex. PW-11/A, which was recorded on 08.08.2007, is as follows:-

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Mere saamne bhi Ranjit ne delivery se pehle bhi maara tha. Biva ko is se pehle bhi mere clinic ke saamne maara tha jo ki Ranjit ne kiya tha. Ranjit ne delivery ke baad bhi Biva ko maara tha. Mere ye kehne par ki mai 100 No. Par cal karoongi tab usne maarna band kiya.”

(Ranjit had beaten (Biva) in my presence before the delivery. Even before this, he had beaten Biva in front of my clinic. After delivery (of the child) too Ranjit had beaten Biva. He desisted from doing so only after I threatened to place a call to No. 100.”)

17. The objective evidence, in the form of the post-mortem report, as well as the deposition of two independent witnesses, proves that the delivery of Biva’s child took place at around 1-1:30 AM in the morning of 8-8-2007. PW-11’s evidence clearly proves that Biva had been beaten by the Appellant Ranjit, before and after the delivery. Although a glance at PW-8’s evidence would give one the impression that she did not witness any beatings, and therefore, the Court should not accept the testimony of PW-11 (on account of the improvements made by the latter, in her deposition, over the earlier version recorded by her) that would not be a correct reading of the testimony of the midwife. PW-8 deposed that after the doctor PW-11 went there she asked Biva’s mother in law to go out, which she did. Apparently PW-8 remained outside after she called out the mother in law, because she clearly corroborated PW-11’s statement of having warned Ranjit and asked him not to beat his wife, or else she would inform the police. Thus, PW-8 actually did not witness the Appellant beating his wife; only PW-11 did so. PW-8’s testimony corroborates PW-11, therefore, in this material particular, i.e the

latter giving a warning to the Appellant to stop beating his wife, or else the police would be called.

18. As noticed earlier, the death of the deceased occurred around 05.00-05.30 AM on 08.08.2007. If one takes the depositions of PW-8 and PW-11 into consideration, the last of them left the scene around 03.00 AM or so. Death occurred two hours or so later. The cause of death was strangulation; there were several (13) fresh *ante mortem* injuries. These, as well as the testimony of PW-15 about the cruelty meted out in the form of beatings to his sister, by Ranjit, find support in the testimony of PW-11. The prosecution was therefore able to establish that Ranjit used to mete out physical cruelty and abuse the deceased; she had gone back to stay with her brother, PW-15. Her parents in law went to bring her and promised PW-15 to take care that no harm befell her, just two days before her death. Just before, and soon after she delivered an infant girl, Ranjit beat her. All these clearly showed that soon before the death of Biva, Ranjit had beaten her; he was warned to stop beating or face police investigation. He was also last seen with the deceased, just two hours or so, before her death. In this context, it is to be noticed that the circumstance of the accused being “last seen” in the company of the deceased, comes into play only when the time gap between two being last seen together alive and the time of death is so small that the possibility of anybody else being the author of the crime becomes impossible. (Re. *State of U.P. v. Satish*, AIR 2005 SC 1000; *Malleshappa v. State of Karnataka*, AIR 2008 SC 69). It was held in *Satish* (supra) that:

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22. *The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs 3 and 5, in addition to the evidence of PW 2.*

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In this court’s opinion, the prosecution was able to establish the “last seen” theory as far as the appellant was concerned.

19. Section 106 Evidence Act, enacts that the onus of proving facts especially within the knowledge of someone who has it, is upon him. This stage of shifting the onus, however arises once the basic facts are proved in a manner known to law (i.e by the prosecution, through proof beyond reasonable doubt). The Supreme Court, in *Shambhu Nath Mehra v State of Ajmer*, AIR 1956 SC 404, said that:

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the general rule that in a criminal case the burden of proof is on the prosecution and section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to

establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge.

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Similarly, in *State of West Bengal v Mir Mohammed Omar* AIR 2000 SC 2988 the Supreme Court said, about Section 106, Evidence Act, that:

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The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the Section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference

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20. In the present case, the prosecution established that Ranjit used to beat the deceased, who had gone back home, and returned to the matrimonial house two days before her death. He had beaten her, before and immediately after her delivery. This was seen by independent witnesses, who testified in court. The time gap between when PW-11 saw the deceased alive, and when she died was very small – about 02-02.30 hours. Ranjit was present when PW-8 and PW-11 left his house. The death was homicidal, and caused by smothering. Ranjit’s explanation that the deceased had slipped and fallen in the bathroom and that was the cause of death, is unconvincing and contrary to the post-mortem report which pointed to the cause of death being

smothering. His attempt to exonerate himself through the testimony of DW-1 Sundri, is also unacceptable. She said that he had gone to fetch milk after Biva delivered the baby. The Trial Court remarked caustically –and in our opinion correctly- that this argument is unbelievable, because no shop or diary would be open at 03.00 AM in the morning. Moreover, if Ranjit had really left the premises, he could have asked the shopkeeper or the man from whom he bought the milk, to corroborate his story; no attempt was made by him. Even then, there is no explanation regarding the numerous injuries on the body of Biva. There is no explanation why she died of smothering. In these state of circumstances, we do not entertain any doubt that the Appellant was indeed responsible for the death of his wife.

21. That brings this Court to the issue as to the role of the Appellant's mother. The testimonies of the police witnesses nowhere reveal that any attempt to explore her role was made. We are at a loss as to why even her statement was not recorded, particularly in the light of the testimony of DW-1 and PW-11. That, however, is no reason why the findings of the Trial Court regarding the culpability and guilt of Ranjit, can be dubbed erroneous. This Court is of the opinion that the Trial Court may take steps to issue suitable directions to the police, having regard to the overall circumstances, to investigate this angle, and file such report, and proceed further in the manner permissible in law. The Trial Court shall oversee these proceedings, and take such action, having regard to the report, as it deems appropriate. We clarify that this order shall not be construed as a direction to take a particular course of action, and the rights of all concerned parties are expressly reserved.

22. In view of the above discussion, we do not find any merit in the appeal; Crl. Appeal No. 1501/2011 is therefore, dismissed.

S. RAVINDRA BHAT
(JUDGE)

S.P. GARG
(JUDGE)

MARCH 23, 2012