

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

RESERVED ON : 8th November, 2012

DECIDED ON : 7th February, 2013

+ CRL.A.886/2011

SURENDER Appellant

Through : Mr.D.B.Goswami, Advocate with
Mr.S.Gaurav Sasan, Advocate.

versus

STATE (N.C.T. OF DELHI) Respondent

Through : Mr.Sanjay Lao & Ms.Richa Kapoor,
Additional Public Prosecutors.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The present appeal is directed against the judgment dated 21.02.2011 and order on sentence dated 06.04.2011 in Sessions Case No.312/2009 arising out of FIR No.20/2005 PS Vasant Vihar by which the appellant- Surender was convicted for committing offences punishable under Section 498A/302 IPC and sentenced to undergo imprisonment for life with fine.

2. On 16.01.2005 around 05.35 P.M., Meenakshi (appellant's wife) was admitted in Safdarjung Hospital. On the basis of Daily Diary (DD) No.24A investigation was set into motion and assigned to SI Ram Avtar who with Const.Ganga Saran reached the hospital. He found that Meenakshi was brought dead in the hospital. He moved an application to preserve her body for 72 hours. On reaching the spot, SI Ram Avtar made enquiries and apprised Sub Divisional Magistrate (SDM) and deceased's parents about the incident. Sh.Rajesh Chopra, SDM recorded statements of father and brother of the deceased and lodged First Information Report. Hari Kishan, deceased's father in his statement (Ex.PW-3/A) disclosed that her daughter- Meenakshi was married to Surender Kumar on 05.12.1999. The accused used to inflict physical torture on her on account of dowry demands. On many occasions, she sustained injuries due to beatings. She used to stay with them for most of the period. In September, 2004, the accused patched up the differences, and brought her to matrimonial home with the assurance not to maltreat her. On 16.01.2005 at about 07.00 P.M. they were informed that the accused had pushed Meenakshi from the third floor of his house, as a result of which she died.

3. During the course of investigation, the Investigating Officer recorded statements of the witnesses conversant with facts. The crime

team photographed the crime spot. The post-mortem on the body was conducted. The death was due to combine effect of hemorrhagic shock and aspiration of the blood in respiratory passage, due to blunt force impact over multiple parts of the body consequent upon beating by the other party. The accused was arrested and his confessional statement was recorded, pursuant to which, he recovered wooden '*thapi/ sota*' used to inflict injuries to the deceased's body. The exhibits were sent to Forensic Science Laboratory (FSL) and subsequently, reports were collected. On completion of the investigation, a charge-sheet was submitted against the appellant. He was charged under Section 498A/304B IPC. In the alternative charge under Section 302 IPC was also framed and the accused pleaded not guilty. The prosecution in support of its case examined 27 witnesses and produced several documents. In his 313 Cr.P.C. statement, the appellant pleaded false implication. One Malika Anthony stepped in his defence. After appreciating the evidence and considering the rival contentions of the parties, by the impugned judgment, the Sessions Court convicted and sentenced the accused for committing offences punishable under Section 498A/302 IPC. Being aggrieved, the appellant has challenged the judgment.

4. Learned counsel for the appellant strenuously urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell into grave error in relying upon the testimonies of PW-3 (Hari Kishan), PW-8 (Smt.Sunita Devi), PW-6 (Naresh Kumar) and PW-7 (Shiv Kumar) who were related to the deceased and were interested witnesses. They were unreliable witnesses whose evidence ought to have been discarded. They have made deliberate and unbelievable improvements. The Trial Court erred in ignoring the cogent and reliable testimony of DW-1 (Malika Anthony) who categorically deposed that the deceased herself jumped from the roof. She was an independent natural witness and was a tenant in the premises in question. The Trial Court without any valid reasons did not consider the testimony of PW-17 (Dr.Raj Kumar) and PW-24 (Dr.Vikas Kumar) who deposed that the accused had taken Meenakshi to their clinic for injuries sustained by her due to fall. She had disclosed that the injuries were due to fall. The accused got admitted Meenakshi in Safdarjung Hospital. The counsel pointed out that PW-25 (Muskan), turned hostile and did not utter a word against him. She was the best person to name him. Therefore, there was no credible evidence before the Court to convict him. The injuries depicted in the post-mortem were due to fall from height. The deceased

was a lady of hot temper and took the extreme step by jumping from the roof in a fit of rage. The prosecution can succeed by substantially proving the very story it alleges. It must stand on its own legs. It cannot take advantage of the weakness of the defence. The defence witnesses are entitled to equal treatment with those of the prosecution. Reliance has been placed upon the authorities, '*Bhagirath vs. State of Madhya Pradesh*' AIR 1976 SC 975, '*Dudh Nath Pandey vs. State of UP*' AIR 1981 SC 911 and Crl.A.720/2011 '*Raj Kumar vs. State (NCT of Delhi)*'.

5. Learned APP supported the impugned judgment and urged that it does not call for interference. The judgment is based upon cogent and fair appraisal of the evidence. The deceased and her parents had lodged complaints prior to the incident against the appellant for treating her with cruelty on account of dowry demands. The deceased used to remain at her parents' house after the marriage for substantial period. The appellant inflicted injuries to her on number of occasions. He had brought her to the matrimonial home with the promise to treat her properly but there was no change in his attitude. The post-mortem report reflects 34 injuries on the deceased's body. The conduct of the appellant was unnatural as he did not inform the deceased's parents about her death.

6. We have considered the submissions and examined the Trial Court record. Un-disputably, the appellant was married to Meenakshi on 05.12.1999. They lived at A-249/I, village Munirka with their two kids. The appellant's parents resided at village Dhoolsaras. On the day of incidence, the deceased was at her matrimonial home with the appellant. The appellant has not disputed injuries found on the deceased's body. The counsel forcibly argued that Meenakshi committed suicide by jumping from the roof. He had no hand in it and was not responsible for her injuries.

7. To dispel appellant's plea, the testimony of PW-9 (Dr.Komal Singh) is very crucial. A medical board consisting of Dr.Komal Singh, Dr.Sarvesh Tandon and Dr.Prem Kumar was constituted to conduct post-mortem of the body on 18.01.2005. On examination, they noticed the following external and internal injuries :

"1. 6 cm long stitched wound having four black colour suture present over the left frontal region just outer to the midline, anteriposterly placed, starting 6 cm above the left eyebrow, clotted blood present along the margin of the wound, antemortem injury.

2. There were bruise over the right side of the chest about 3 cm x 3 cm, 4 cm away from the right pinna, red in colour (antemortem).

3. Bruise present on the inner side of the right side of the lower lip 2.5 cm x 1 cm red in colour, (antemortem) and the mucuso lacerated.

4. Bruise on the inner part of the left side of the lower lip 1.5 cm x 1 cm red in colour, antemortem, mucuo-lacerated.
5. Bruise below and outer to the left eye 9 cm x 6 cm, red, antemortem.
6. 2 cm long stitched wound contain two black thread stitch, one cm outer to the outer angle of the left eye, antemortem.
7. Bruise on the outer surface of middle part of the right arm 11 cm x 9 cm, red, antemortem.
8. Linear abrasion present on the outer back of the right wrist, obliquely placed 2.5 cm x 0.2 cm, no clotting, faint in presentation.
9. Bruise on the upper part of the right palm near the wrist, 6 cm x 3 cm, red, antemortem.
10. Multiple small size bruises on the right palm involving the palmer surface of the finer of the right hand, red, antemortem.
11. Abrasion 1 cm over the middle of the back of right forearm 11 cm above the right writs, no clotting faint in presentation.
12. Bruise two in number 1 x 2 cm, 1 cm apart from each other, reddish in colour, present over the outer aspect of the right knee, antemortem.
13. Bruise 9 cm x 7 cm over the inner front aspect of the right lower leg 10 cm middle malleous of the right foot, antemortem.
14. Abrasion 1 cm just above the right ankle on front aspect, no clot, faint in presentation.
15. Bruise over the right buttock 5 cm x 2 cm reddish in colour, transversely placed, antemortem.
16. Bruise on the upper part of the left arm involving the shoulder area in a area of 15 cm x 8 cm, red, antemortem.
17. Bruise in the middle outer part of the left arm 7 cm x 5 cm, reddish in colour obliquely placed, red and antemortem.
18. Bruise 14 cm x 7 cm in middle and the lower part of the left forearm, red in colour, antemortem.
19. Bruise over the back of the left hand, outer aspect 8 cm x 6 cm red in colour, antemortem.

20. 5 small abrasion placed inter mingling over the injuries on injury no. 18 and 19, faint inn presentation.
21. Bruise 4 cm x 3 cm on upper part of the left forearm 6 cm below the left elbow, red, antemortem.
22. Bruise 4 cm x 2 cm on upper outer front of the left side of the chest, 9 cm above the left nipple, transversely placed, red, antemortem.
23. Abrasion 3 cm x 1.5 cm size over the middle part of the left illiacrest, no clot, faint in presentation.
24. Multiple parallel bruises on lower and middle part outer of the left thigh and also on the outer and back part of the left thigh, muscle deep, total area 18 cm x 17 cm, red, antemortem.
25. Abrasion three in number 2 to 4 mm each over the upper and outer aspect of the left knee, red in colour, antemortem.
26. Bruise 7 cm x 3 cm placed above and outer aspect of the left knee, red in colour, antemortem.
27. Bruise multiple on front side and the back and lower part of the left leg, red in colour, 10 x 12 cm, antemortem.
28. Abrasion over the middle front of the left leg 2 cm x 1 cm in size, 16 cm below the left knee, red, antemortem.
29. Bruise 10 cm x 7 cm over front and outer side of the left ankle, red in colour, antemortem.
30. Bruise 4 cm x 2 cm in size over the distal front of the left front, red, antemortem.
31. Bruise 3 cm x 2 cm in size, greenish yellow in colour over the inner part of the left leg 6 cm below the left kneem 6 to 8 days old injury.
32. Bruise 3 cm x 2 cm in size, greenish yellow in colour 7 cm below the right knee over upper and inner part of the right leg, 6 to 8 days old injury.
33. Bruise 1 cm x 2 cm on the right side, red, antemortem.

On internal examination of head and skull it was found that there was contusion of the scalp tissue over the right fronto parietal occipital and the left parietal area and below the external injury no.1, seepage present, post mortem fracture present over the left frontal area, left frontal passing to the

left temporal, left occipital, right occipital bone, right front temporal and the right frontal bone, fracture of the left temporal two in number vertically placed, no clotting, no blood, post mortem injury. Post mortem fracture multiple involving all six fossas of the skull. Brain pale no haemorrhage of any type seen, no oedema, meninges torn below the above mentioned fractures, postmortem. On examination of the neck all the structures were intact and normal. Tracheal lumen contained approximately 30 ml of blood which were traced up to the bronchioles. Liquid and the clotted blood mixed. On examination of the thorax all thoracic bones and diaphragm intact and normal and heart, lungs were normal. Postmortem lividity present over the lower surfaces of the lungs. ”

(emphasis supplied)

8. In their opinion, cause of death was combined effect of hemorrhagic shock and aspiration of the blood of respiratory passage, due to the blunt force impact over multiple parts of the body consequent upon beating by the other party. Fall from height appeared to be a post-mortem phenomena. All external injuries were ante-mortem in nature except injuries No.8,11,14,20 and 23. Time since death was two days approximately. Thus the doctors have opined that the body of the deceased had both ante and post death injuries. The detailed post-mortem report is Ex.PW-9/A. PW-10 (Dr.Sarvesh Tandon) also proved the post-mortem examination report (Ex.PW-9/A). Both PW-9 (Dr.Komal Singh) and PW-10 (Dr.Sarvesh Tandon) were subjected to cross-examination. PW-9 (Dr.Komal Singh) disclosed that medical board of three autopsy

surgeons was constituted by the order of SDM. Report Ex.PW-9/A was given in consultation with each other. He fairly admitted that no opinion regarding duration of the ante-mortem injuries was given. He was, however, of the view that the injuries could have been caused within 48 to 72 hours, approximately. He was unable to tell the exact or near about time of causing of the injuries as it were not possible. He denied that the post-mortem examination report was given under pressure. The opinion given by the experts about deceased's cause of death remained unchallenged and uncontroverted in the cross-examination. The medical evidence indicates that Meenakshi was severely beaten. The number of injuries caused to her clearly shows that the physical assault was pre-meditated. We have no reasons to discard the expert's unambiguous opinion. Apparently, it was a case of culpable homicide.

9. The conduct of the accused was unnatural, unreasonable and opposed to normal conduct of a human being. Meenakshi sustained multiple injuries and was taken to Safdarjung Hospital at about 05.35 P.M. The appellant did not inform her parents and relatives about her fatal injuries. PW-3 (Hari Kishan) deposed that he received information on 16.01.2005 at 07.00 P.M. on telephone from a lady. When they reached at the matrimonial home of the deceased at 07.45 P.M., no family member

was present. The accused disappeared from the hospital and absconded. Search was made but he could not be apprehended that day. He could be arrested on 18.01.2005 at 04.30 P.M. The accused did not explain as to why he absconded from the hospital and did not participate in the investigation. He did not elaborate where he remained present before his arrest.

10. On 16.01.2005, the accused took Meenakshi to Daya Memorial Hospital, Munirka where PW-24 (Dr.Vikas Kumar) examined her. She was provided first aid for her head injury. He advised to take her to some big hospital. Entry in this regard was made in the register at Sl.No.5479 (Ex.PW-13/A2). Ex.PW-13/A1 is the relevant receipt in the receipt book. PW-17 (Dr.Raj Kumar), Chairman, Daya Memorial Hospital, Munirka Village also stated that Meenakshi was treated by Dr.Vikas and he had advised X-ray skull. She was discharged after a couple of hours. At about 04.30 P.M., she was brought in a critical condition and the doctor expressed his helplessness and advised to take her elsewhere. In the cross-examination, he admitted that second visit at 04.30 P.M. was not recorded as the patient had not entered the hospital. The accused did not explain as to how and under what circumstances, Meenakshi had sustained serious injuries on 16.01.2005 on her head. He

also did not offer any explanation as to why he did not take her to a good hospital despite specific piece of advice by PW-24 (Dr.Vikas Kumar). It is unbelievable that Meenakshi sustained critical injuries due to fall while working in the house. When Meenakshi was taken to Daya Memorial Hospital, Munirka second time, her condition was very critical and no first aid was made available to her. Again, the accused did not offer any explanation as to how she sustained fatal injuries at 04.30 P.M. after she was treated for her head injuries by PW-24 (Dr.Vikas Kumar) by providing first aid. It appears that the appellant did not pay heed to the advice of the doctor. Despite Meenakshi sustaining head injury, the appellant did not follow up and give required and necessary treatment. He brought her back to the matrimonial home and again caused injuries on her body by beating her. Throughout the day on 16.01.2005, the appellant was present at his place of residence. He did not offer any explanation as to why he did not go that day to his place of work/ job.

11. There is ample evidence that Meenakshi was treated with cruelty both physical and mental by the accused during her stay at the matrimonial home. PW-3 (Hari Kishan) deceased's father deposed that after 3-4 months of the marriage, the accused started quarrelling with her daughter. He used to ask Meenakshi to bring money from her parents. He

had given money on 5-6 occasions to the deceased to be given to the accused. In 2004, on the occasion of '*Raksha Bandhan*', the accused demanded ₹20,000/-. Her daughter filed a complaint to SP, Gurgaon. When the accused came to know, he went with his family members and settled the dispute. The accused used to harass her daughter for dowry by demanding money. PW-8 (Smt.Sunita Devi), deceased's mother corroborated his version and deposed that the accused used to beat her daughter almost daily during her stay with him. He used to tell her daughter to bring sometimes ₹10,000/-, ₹20,000/- and sometimes ₹50,000/-. She used to give money to her daughter to enable her to live properly with the accused. The accused did not mend his ways and continued to beat and torture her. In our view, parents of the deceased have no ulterior motive to level false allegations against the accused. They have meticulously narrated the circumstances in which Meenakshi had to live. We find them reliable witnesses. The deceased herself lodged complaint with the police. Ex.PW-8/A is the complaint lodged by Meenakshi to SSP, Gurgaon on 04.09.2004. In this complaint, she gave detailed account as to how and in what manner, the accused used to torture her on account of dowry demands. She alleged physical and mental cruelty. She further disclosed that during four years of her marriage, she

could not stay at her matrimonial home for one year. Despite adverse circumstance, she tried her best 8-10 times to adjust. The complaint lodged in 2004, cannot be termed motivated. Application mark-X4 to SSP, Gurgaon and application mark-X5, dated 20.09.2004 reveal that the complaint was withdrawn as the matter was compromised and Meenakshi's in-laws took her with the promise not to harass her in future. The accused did not controvert these complaints. Ex.PW-11/A is the complaint lodged by deceased's mother on 24.08.2001 with Delhi police. Ex.PW-11/B is the complaint of the deceased Meenakshi to CAW Cell. These complaints coupled with oral testimony of the deceased's parents followed by fatal injuries on her body establish beyond doubt that during her stay in the matrimonial home, Meenakshi was ruthlessly subjected to violence, and cruelty by the accused. Ex.PW-11/D is the final report prepared by PW-11 (SI Yashpal) on the complaint made to CAW Cell, Basant Vihar by the deceased in 2001. The complaint was not pursued as the matter was settled between the parties.

12. Meenakshi was given merciless beatings on the day of occurrence in the matrimonial home. The accused did not deny his presence in the house that day. It was within his special knowledge as to how and under what circumstances, Meenakshi sustained fatal injuries on

different parts of her body and was required to divulge under Section 106 Evidence Act. The accused did not give any explanation. Contrary to that, a false plea was set up by the accused that Meenakshi sustained injuries due to fall from the third floor or that she jumped from there on her own. Ex.PW-4/1 to Ex.PW-4/7 are the photographs of the spot. Ex.PW-4/7 shows that there were electric wires and open windows on different storeys. PW-9 (Dr.Komal Singh) was certain that such type of injuries found on the body were not possible by fall from third floor as there were AC, cooler and wires between them. He was of the opinion that ante-mortem injuries were 48 to 72 hours old and it was much before the time when the alleged fall took place. The ante-mortem injuries were inflicted during day time on 16.01.2005. She was taken to the hospital and it was pretended by the accused that the injuries were due to fall from roof. Curiously, the accused did not report the incident to the police. He did not summon any doctor at the spot to make available first aid to the deceased. He did not take assistance of any neighbour or passerby to take her to the hospital. He alone took Meenakshi hurriedly to Daya Memorial Hospital where he was not entertained. He had no option but to take her to Safdarjung Hospital. This conduct of the accused is unnatural. Post-mortem injuries could not have been caused by the Meenakshi but were

caused by a third person. In this case, the said third person is the appellant. Thus the medical evidence, conduct of the appellant, statement of PW-24 and PW-17 are clear pointers and establish murder and not self inflicted injuries caused by a deliberate fall from height.

13. The accused made confessional/discovery statement (Ex.PW-16/C) and pursuant to it recovered one '*wooden sota*' (Ex.P3) seized vide memo Ex.PW-16/D which was used for beating the deceased. '*Wooden sota*' (Ex.P3) was shown to the autopsy surgeons and they were of the opinion that injuries on the body of the deceased were possible with that weapon. Their detailed report is Ex.PW-9/C.

14. The accused made a futile attempt to prove his innocence by examining DW-1 (Malika Anthony) who stated that Meenakshi was hot headed and used to beat Surender with broom and chappals for money. She further deposed that on 16.01.2005 at about 05.00 P.M. she heard Surender's voice who shouted '*Malika ji Meenakshi chhat par bhag rahi hai*'. Thereafter, she heard a sound of fall of Meenakshi on the ground. Surender called two persons standing there and they took her to the hospital. The Trial Court analyzed her evidence minutely and for the detailed reasons discarded her testimony. She admitted in the cross-examination that she did not see Meenakshi going upstairs that day. She

saw her for the last time when she had fallen on the ground. She did not reach the roof and had no knowledge that Meenakshi jumped on her own from there. She stated that she did not notice any injury on her body when she had fallen and thereafter put under stairs. This testimony is apparently false as injuries sustained by Meenakshi were multiple in number and visible.

15. DW-1 (Malika Anthony) deposed facts which were not even asserted by the accused. She introduced a new story alleging that after the fall from roof, the accused shifted Meenakshi under the stairs. No reliance can be placed on her testimony as she was not able to tell if Meenakshi sustained injuries on her body after fall. The photographs reveal that the injuries were quite visible and she was bleeding from her mouth and nose profusely. DW-1 did not make any statement to the police during investigation. She was a tenant in the premises, known to the accused for the last 10 years and had good relation with him. Her statement is in conflict with the medical evidence on record. She stated that two ‘persons’ assisted Meenakshi to take her under the stairs. She however, did not elaborate their identity. The accused did not examine any such independent witness.

16. It was alleged that Meenakshi used to get treatment from the hospital for depression. However, no such medical record was produced. The deceased had two children. She was not expected to leave them in lurch and commit suicide. As observed and elucidated above, the facts do not support suicide by fall but clearly indicate infliction of injuries on the deceased by the appellant. The suicide theory propounded by the accused does not inspire confidence and requires rejection.

17. It is obligatory on the part of the accused while being examined under Section 313 Cr.P.C. to furnish some explanation with respect to the incriminating circumstances associated with him. Merely, making a bald statement that he was innocent and recoveries were false is not enough. The incriminating circumstances appearing against the accused were put to his 313 Cr.P.C. statement. He did not explain it and either expressed his ignorance or denied them. He did not come up with any specific defence as to how the incident took place. He even did not allege that Meenakshi had sustained head injuries due to fall in the house or that she was a lady of hot temper and in a fit of rage jumped from the roof. He did not divulge as to what prompted her to end her life. He even denied that PW-24 (Dr.Vikas Kumar) had given her first aid treatment at

Daya Memorial Hospital. He did not claim presence of DW-1 (Malika Anthony) at the crime scene.

18. It is true that PW-25 (Baby Muskan) accused's daughter did not support the prosecution. She was 10 years old when she appeared for evidence on 08.05.2010. Apparently, she was about 5 years old on the day of occurrence. She was staying with her grandparents and aunt (bua, chichi-chacha). Court can understand her dilemma when she did not opt to depose against her father as she had already lost her mother. The accused cannot get any benefit out of it.

19. The various improvements and discrepancies highlighted by counsel are insignificant. They are explainable variations which are likely to occur in the normal course and do not, in any way, adversely affect the core case of the prosecution. It is only when exaggerations fundamentally change the nature of the case, the Court has to consider whether the witnesses were stating the truth or not.

20. In the light of above discussion, the conviction of the appellant under Section 498A and 302 IPC is maintained. The appellant shall undergo RI for three years with fine of ₹10,000/- under Section 498A IPC and in default of payment of fine, will undergo SI for one month. Under Section 302 IPC, the appellant shall undergo imprisonment

for life with fine of ₹20,000/- and in default of payment of fine, will undergo SI for three months. Both the sentences shall run concurrently.

21. The appeal filed by the appellant stands disposed of in the above terms.

22. Trial court record be sent back forthwith.

(S.P.GARG)
JUDGE

(SANJIV KHANNA)
JUDGE

FEBRUARY 07, 2013

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