

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

RESERVED ON : April 18, 2013

DECIDED ON : July 23, 2013

+ CRL.A.984/2011

RANJANA

..... Appellant

Through : Mr.Gaurav Kumar, Advocate.

versus

STATE

..... Respondent

Through : Mr.M.N.Dudeja, APP for the State.

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Ranjana (the appellant) impugns a judgment dated 05.04.2010 in Sessions Case No.52/2009 arising out of FIR No.118/2004 registered at police station Gokalpuri by which she was convicted for offences punishable under Sections 304 part II/201 IPC and sentenced to undergo Rigorous Imprisonment for six years with total fine ₹3,000/-.

2. Daily Diary (DD) No.8A was recorded at 12.00 (noon) on 22.03.2004 at Police Station Gokalpuri on getting information about recovery of body in a house at A-block, Gali No.1, Rama Garden, Karawal Nagar, Delhi. The investigation was assigned to ASI Tara Dutt

who with Constable Harinder Singh reached the spot. The investigation was taken over by PW-11 (SI Amul Tyagi) who with Constable Sohanvir went to the spot. ASI Tara Dutt informed him that Rakambir Singh's dead body was lying in a gutter inside the house. Crime team was summoned. The Investigating Officer made inquiries from Kumari Durgesh, victim's daughter, aged eight years and recorded her statement (Ex.PW-2/A). Crime team reached the spot and got the crime scene photographed. The body was taken out of the gutter. SI Amul Tyagi lodged First Information Report. Dr.Arvind Kumar (PW-10) conducted post-mortem examination of the body. Statements of witnesses conversant with the facts were recorded. Exhibits were sent for analysis to Central Forensic Science Laboratory, Kolkata. On completion of investigation, Ranjana was sent for trial for committing offences under Section 302/201 IPC. She was duly charged and brought to trial. The prosecution examined 19 witnesses in all to establish her guilt. In her 313 statement she claimed innocence and pleaded false implication.

3. Kumari Durgesh, appellant's daughter, revealed startling facts and disclosed that on 20.03.2004 at about 10.00 P.M. her father and his friend Rajpal consumed liquor in the house. Rajpal left thereafter. Her father did not allow her mother to go to bed. On that, her mother put

a chunni in his neck and made him to lie on the cot. She tied that chunni with the cot and made them to sleep stating that she would untie him in the morning. On the next morning, she saw him dead. On 21st March, 2004, on Sunday, her mother dragged him from the cot and threw him in a gutter inside the house.

4. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court by the impugned judgment convicted Ranjana for the offences mentioned previously and sentenced her accordingly. Being aggrieved, she has preferred the appeal.

5. Learned counsel for the appellant urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell into grave error in holding that it was a case of culpable homicide not amounting to murder. The counsel emphasised that it was a rash and negligent act of the appellant as she put chunni around the neck of her husband and did not take proper care to untie it. She had no intention or motive to murder her husband. She was not aware of the consequences of her act. The deceased was in the habit of beating the appellant. To prevent him from consuming more liquor and to beat her, she in exercise of private defence, tied chunni with the cot. She did not flee the spot and was arrested after an inordinate delay of six years. Learned Additional

Public Prosecutor urged that there is no infirmity in the impugned judgment to interfere with. All the contentions of the appellant have been dealt with minutely in the impugned judgment. The appellant deliberately and intentionally put the chunni around the deceased's neck. The testimony of the doctor, who conducted the autopsy is relevant to establish her guilt.

6. I have considered the submissions of the parties. The material facts are undisputed and have been admitted by the appellant in her statement under Section 313 Cr.P.C. Star witness to prove the appellant's guilt is her daughter PW-2 (Kumari Durgesh), a child witness aged eight years. The First Information Report was lodged on her statement. She gave graphic account of circumstances leading to the death of her father. In her court statement as PW-2, she proved the version given to the police at the first instance without any variation. The learned presiding officer put number of preliminary questions before recording her statement to ascertain if she was a competent witness and able to understand the question and give rational answers. The Trial Court was satisfied that PW-2 (Kumari Durgesh) was able to understand and answer the questions properly. She deposed that on 20.03.2004 at about 10.00 P.M. her father and Rajpal consumed liquor. After

consuming liquor, her father asked her mother for dinner but she did not it. She got angry and tied a chunni around his neck with her hands. When she (PW-2) tried to stop her not to tie chunni around her father's neck, she (the appellant) stated that she would untie the chunni next morning. She (the appellant) bolted the door from inside. After consuming liquor, Rajpal uncle left the house. After tying the chunni, her mother made him to lie on a cot and tied that chunni with a leg of the cot. On the next morning, she got up and touched his body. It was without motion and had turned bluish. She saw her mother opening gutter cover by removing the cement on it. She, her brothers and sisters were made to sleep. Her mother put her father's body in the gutter. In the cross-examination, she admitted that she and her mother used to ask the deceased not to consume alcohol. The deceased used to consume alcohol in the house despite their resistance. She further admitted that under the influence of liquor, her father used to quarrel, abuse and beat her mother. She volunteered to add that she (the appellant) also used to beat him and neighbours used to intervene occasionally. She further elaborated that on the day of incident, her mother had not cooked food.

7. No material discrepancy emerged in the cross-examination of the child witness to disbelieve and discard her statement. No ulterior

motive was assigned to her to falsely implicate her mother for her father's death. In her 313 Cr.P.C. statement, the appellant admitted that on 20.03.2004 at about 10.00 P.M. her husband and his friend Rajpal had consumed liquor. She denied that she had tied chunni (Ex.P-1) around the neck of her husband and claimed that she had tied his hands only with a view to restrain him from going out of the house again to consume liquor. She further admitted that she made him to lie on the cot and tied chunni with one leg of the cot. She admitted that when on the next morning Kumari Durgesh woke up and touched his body, she found that it was motionless and had turned bluish. She admitted that after making children to fall sleep, in the afternoon she put the body in the gutter located in the gallery of her house. She admitted that she gave false explanation about his whereabouts to his relatives. She admitted recovery of the body from the gutter. She did not challenge the correctness of the statement (Ex.PW-2/A) made by Kumari Durgesh to the police on the basis of which First Information Report was lodged. She admitted that the videographs and photographs were done when the body was taken out of the gutter/sewer. The court has no reasons to disbelieve PW-2 Kumari Durgesh's version that the appellant had put chunni (Ex.P-1) around the neck of her father. She tied the chunni with the leg of the wooden cot. The Trial Court

discussed in detail that no ulterior motive surfaced on record. Since an altercation had taken place between the two on consumption of liquor, it appeared that in order to avoid further quarrel, the appellant tied him with a chunni with an intention to untie it next morning. There was no pre-planning or pre-meditation and the occurrence took place on a trivial issue of consumption of liquor in the house. It appears that the appellant adopted aggressive posture against the deceased to scare him and to prevent him to consume more liquor or not to pick up quarrel with her. The Trial Court rightly concluded that the appellant had no intention to cause death or any intention to cause such bodily injury as was likely to cause death. The Trial Court was, however, of the view that the appellant could be attributed knowledge that her act was such which might cause death or knowledge of causing such bodily injury as was likely to cause death. I find no good reasons to deviate from the conclusion arrived at by the Trial Court. Apparently the deceased was in a drunken state and was unable to take care of himself. She in a merciless manner put chunni (Ex.P-1) around his neck and tied it with the leg of the cot on which he was made to lie. Apparently, the deceased was incapacitated and was unable to release himself. After tying him with the chunni, she did not

bother to take care of him and kept him at the risk of dying throughout the night.

8. Post-mortem examination report (Ex.PW-10/A) by Dr.Arvind Kumar reveals that the cause of death was asphyxia due to blockage of respiratory track by gastric content as a result of regurgitation which is possible in the state of intoxication due to alcohol. Post-mortem examination on the body was conducted on 23.03.2004. The opinion regarding cause of death was withheld for want of chemical analysis report of viscera. On 09.02.2009 after scanning the post-mortem report (Ex.PW-10/A) and CFSL report, PW-10 Dr.Arvind Kumar gave his opinion (Ex.PW-10/B). He was not cross-examined despite an opportunity given. The opinion given by expert witness remained unchallenged. Obviously, there was direct nexus between 'the act' and the 'death'. To tie an intoxicated person with a chunni around his neck and thereafter to tie the chunni with a leg of the cot appears to be an act of such character that no reasonable mind would be ignorant of the likelihood of its causing death. The appellant's conduct is relevant to ascertain her guilt. After Durgesh found her father motionless next morning, the appellant did not bother to provide him medical aid. She did not take him to hospital. She even did not inform his close relatives who

lived in the vicinity. When they made inquiries about his whereabouts subsequently, she gave false explanation faking that he had gone somewhere. She put the dead body in the gutter to conceal her guilt. She did not even bother to perform last rites as per customs. The body was recovered from the gutter when PW-2 (Kumari Durgesh) got an opportunity after two or three days and informed her uncle Premvir who lived in an adjacent house. She did not explain unreasonable and unnatural conduct. I do not subscribe to the view that it is a case of mere neglect.

9. The statement of the appellant's daughter was enough to arrest her immediately. The investigation was transferred from one police officer to another and none of them attempted to file the charge-sheet. The CFSL result was collected after a considerable delay on 31st January, 2009 and the appellant was arrested on 27.02.2009. During this period, she did not attempt to flee. She is not a previous convict. She is in custody since then. Her substantive sentence was suspended on her furnishing a personal bond in the sum of ₹20,000/- with one surety in the like amount by an order dated 09.09.2011. It was subsequently reduced to ₹1,000/- with one surety on 04.10.2012. She was not in a position to furnish it. Order dated 05.03.2013 records that she is frequently admitted

to the medical room for her aggressive and violent behavior and is under constant treatment in IHBAS. It further records that her family consists of three minor children. There is nobody to look after her at home. Medical report dated 01.03.2013 of Medical Officer, Incharge, Central Jail No.6 on record reveals that she was diagnosed as 'Bi polar affective disorder and mostly manic'. She was referred to IHBAS psychiatric department. On 22.12.2012 she was again sent to IHBAS with detailed behavior report and was advised medication. On 05.01.2013 she was reviewed at IHBAS and advised medication. She is being seen by jail psychiatrist and has been advised to continue the same treatment. Nominal roll dated 29.06.2011 reveals that she has already spent two years and four months in custody as on 27.06.2011. The period has since increased to four and a half years.

10. Taking into consideration all these facts and circumstances, while confirming the conviction under Section 304 Part II/201 IPC order on sentence is modified and the substantive sentence of the appellant is reduced to five years with total fine of ₹1,000/- and failing to pay the fine to undergo SI for fifteen days.

11. The appeal stands disposed of in the above terms.

12. A copy of the order be sent to Jail Superintendent. Copy be also sent to the accused/appellant through Jail Superintendent. Trial Court record, if any, along with copy of this order be sent back to the Trial Court.

(S.P.GARG)
JUDGE

July 23, 2013
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