

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

% *Judgment reserved on :24.10.2013*
Judgment delivered on:06.11.2013

CRL.A. 1375/2010

RADHEY SHYAM Appellant

Through: Mr.R.N.Dubey, Advocate.

versus

STATE Respondent

Through: Mr.Sunil Sharma, APP.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 On the intervening night of 18-19.01.2006 at about 3.45 a.m. DD No.27-A was received in police station Tilak Nagar giving information through an unknown person that one lady was lying murdered in House No.WZ-12, Chaukhandi Village. This DD was entrusted to SI Jaipal Singh (PW-8) who along with constable Vinod (PW-16) reached the spot.

2 On the way on reaching the primary school Chaukhandi, a TSR was noted coming from the opposite side; on the signal given by the TSR driver PW-8 stopped his vehicle, Joginder (PW-1) was driving the said TSR. The appellant Radhey Shaym was sitting in this TSR. PW-1

informed the police officials that Radhey Shyam who was sitting in the TSR had committed the murder of his wife; he had hired his TSR to throw her dead body in the nala.

3 Armed with this information PW-8 and PW-16 accompanied by PW-1 and the appellant Radhey Shyam reached the spot i.e. house No.WZ-12, Village Chaukhandi. On entering the house, the dead body of a female was found lying on the floor on the dari. Radhey Shyam identified the dead body as that of his wife Pooja. A ligature mark was noticed on the neck of the dead body; the mouth of the victim was foaming.

4 Statement of Joginder (ExPW-1/A) was recorded. His statement was to the effect that on the fateful night i.e. the intervening night of 18-19.01.2006 at about 2.30-3.00 a.m. when he was standing at the bus stand of Village Khayala with his TSR and waiting for passengers one person i.e. Radhey Shyam came to hire his scooter; he told him that he had committed the murder of his wife and wished to take her dead body in order that he could dispose it off in the ganda nala. Further version of PW-1 being that on the way at the turn of the primary school he saw two police officials coming on their vehicle; he signaled them to stop; he told them what had been informed to him by Radhey Shyam. PW-1 accompanied by Radhey Shyam thereupon reached the spot where the dead body was found lying. It was on this statement of PW-1 (Ex.PW-1/A) that the rukka was sent at 5.30 a.m. in the morning of 19.01.2006 and the present FIR No.34/2006 was registered against Radhey Shyam.

5 Satpal Singh (PW-2) was the owner of the factory where Radhey

Shaym and his wife Pooja were working. His version is to the effect that on 18.01.2006 Pooja had left the factory at 7.30 p.m. The appellant Radhey Shyam left the factory at 8.40 p.m.; 15-20 minutes later Radhey Shyam came back to the factory; he was looking perplexed; he informed PW-2 that his wife had committed suicide by hanging herself with a rope. PW-2 advised Radhey Shyam to inform the police; further version of PW-2 being that Radhey Shyam was under the influence of liquor at that time. This statement of PW-2 was not strictly in conformity with his statement under Section 161 Cr. P.C. In his statement before the police he had stated that Radhey Shyam had informed him that he had killed his wife; this witness was however hostile in Court on this aspect and before the Court he stated that Radhey Shyam had informed him that his wife had committed suicide. PW-2 had been declared hostile and was cross-examined on this aspect; he however denied having made such a statement before the police. In a further part of his testimony he deposed that he had reached the spot i.e. the place of occurrence at about 2.30 a.m. in the morning.

6 The landlord of the house where Radhey Shyam and Pooja were residing is Deep Chand; he was examined as PW-3. He deposed that he was the owner of WZ-12, Chaukhandi Village where he was living with his family members. Radhey Shyam was a tenant in one room; he was paying a monthly rent of Rs.600/-. Radhey Shyam and his wife were working in a private factory; they were not on talking terms with the neighbours. This witness was not cross-examined.

7 A perusal of the scaled site plan (Ex.PW-5/A) shows that house

No.WZ-12, Chaukhandi Village, Tilak Nagar had three rooms; one was in the occupation of the landlord PW-3; another room was in occupation of a person by the name of Ashok Kumar; another portion of the house which has been described as a jhuggi was in occupation of the appellant and his wife Pooja. In between the room of PW-3 and the appellant there was a private passage.

8 The initial investigation was done by PW-8 who had been accompanied by PW-16. He had recorded the statement of PW-1. The dead body was sent to the mortuary through PW-16.

9 Investigation was thereafter handed over to Inspector O.D.Yadav (PW-15). PW-15 had summoned the crime team at the spot. The crime team had given its report Ex.PW-16/A. A rope was found lying at the spot which was taken into possession vide memo Ex.PW-15/C. The appellant was arrested vide memo Ex. PW-2/C; his disclosure statement Ex.PW-2/E was recorded. Statements of other witnesses were also recorded.

10 Post mortem of the deceased was conducted by Dr.B.N.Mishra examined as PW-16. Ex.PW-16/A has noted the following external injuries upon the body of the victim.

1 Contusion with abrasion over right side of chin of size 2 cm x 1 cm with reddish brown, obliquely placed 4 cm from right angle of mouth.

2 Contusion over right side of lower lip reddish brown of size cm x 0.5 cm just near to right angle of mouth

3 Abrasion with contusion over right elbow of size 3 cm x 2.5 cm reddish brown, obliquely placed.

4 *One abraded ligature mark seen around the neck crossing the neck on anterior aspect just below the upper part of thyroid cartilage.*

5 *Completely encircling the neck with placed horizontally. Ligature mark measured 32 cms in length and 7 cms in breadth. Ligature marks runs on the left side 3 cms below left mandibular angle, transversely backward upto 7 cms below left mastoid process upto nape of neck at the back of neck 4 cms above 7th cervical vertebra, then runs transversely forward upto 5 cms below right mastoid process and 3 cms below right angle of mandible upto the thyroid cartilage. Irregular impression of knot is seen on the right side of neck 2 cms below the right mandibular angle with an area of bruise of size 4 cms x 2cms. Margins of ligature mark is abraded and ecchymosed. The base of ligature mark is reddish, grooved and hard.*

Cause of death was opined as asphyxia as a result of ligature strangulation.

11 PW-16 had also given his opinion on the weapon of offence which had been sent to him for opinion. As per his opinion Ex.PW-16/B the ligature mark on the victim could have been caused by this jute rope.

12 In the statement of the accused recorded under Section 313 Cr.P.C. the defence set up by him reads as follows:

“I am innocent and have been falsely implicated in the present case. My wife and myself were working in factory. On 18.01.2006, my wife had left the factory at about 07:30 pm and I left the said factory at around 08:45 pm. When I reached my house, there was no light and my wife was lying on the floor in an unconscious condition. On seeing this I immediately rushed to my factory to

infor about this incident to the owner of the factory. On his advice, I rushed to Khayala Chowki to inform the police about the same where I was made to sit and later on I was falsely implicated in this case. Later on, I came to know that my wife had already died but I do not know about the cause of her death.”

13 No evidence was led in defence.

14 On the basis of the aforesaid evidence which was adduced by the prosecution, the accused was convicted under Section 302 IPC. He had been sentenced to undergo imprisonment for life; he had also been sentenced to pay a fine of Rs.5000/- in default of payment of fine to undergo SI for one year.

15 Arguments have been heard at length.

16 On behalf of the appellant, arguments have been addressed by Mr.R.N.Dueby, Advocate. Written submissions have also been filed. It is pointed out that this is case of circumstantial evidence. There is no eye-witness account. Unless and until all the links in the chain of circumstantial evidence are complete no conviction can be ordered. The high light of the argument of the learned counsel for the appellant is that apart from the extra judicial confession which was purported to have been made by the appellant to PW-1 there is no other evidence forthcoming from the prosecution and the trial judge has also relied upon this sole circumstance to convict the appellant. Submission being that an extra judicial confession is a weak evidence; unless and until there is a corroboration to this piece of evidence, conviction of the

appellant could not be founded on this single piece of evidence. Testimony of PW-1 is highly suspicious as it is unimaginable and impossible that a person in his right senses would make a confession to a stranger that too to a TSR driver who was absolutely unknown to the appellant; such a piece of evidence smacks of suspicion and could not have been relied upon. Further submission being that no motive for the crime has been elicited in the version of the prosecution. Attention has been drawn to the testimony of PW-2. Submission being that this witness has not supported the case of the prosecution and had clearly stated that the appellant Radhey Shyam had told him that his wife had committed suicide. PW-2 had also denied the suggestion given to him by learned Public Prosecutor that since Pooja used to have talks with her co-workers this was the reason for annoyance to the appellant and was the motive for the commission of the crime. Trial court had thus rightly returned a finding that no motive has been established by the prosecution. The circumstance of last seen is not available to the prosecution; even presuming that the evidence of last seen is taken on account there is no further evidence with the prosecution to establish that the same was proximate to the time when the murder of Pooja had taken place or that the appellant alone was responsible for the aforementioned act. To support this argument, reliance has been placed upon the judgment of the Apex Court in Tejinder Singh @ Kaka Vs. State of Punjab IV (2013) SLT 443; a judgment of the Division Bench of this Court in Rahisa Vs. State of the NCT of Delhi 181 92011) DLT 561 (DB); as also another judgment of the Division Bench of this Court in Crl. Appeal No. 1375/2010

Mohd. Usman Vs. State 180(2011) DLT 602(DB); as also another judgment of the Division Bench of this Court in Kamlesh Singh Vs. State 203(2013) DLT 67(DB). Submission being reiterated that unless and until, all links in the chain of evidence are complete the conviction of the appellant cannot be sustained. On all counts the appellant is entitled to a benefit of doubt and a consequent acquittal.

17 On behalf of learned public prosecutor these submissions have been rebutted. The submission of the learned public prosecutor is that the extra-judicial confession made by the appellant to PW-1 suffers from no infirmity. It is a vital piece of evidence; that apart the conduct of the accused which is reflected in terms of Section 313 Cr.P.C. shows that it was abnormal; instead of rendering medical help to his wife he had gone to meet his employer on coming to know that his wife had become unconscious. Motive of the crime also stood proved in the version of PW-1. On no count does the impugned judgment call for any interference.

18 Record has been perused. We have also heard the learned counsel for the appellant, learned public prosecutor and appreciated their submissions.

19 This is admittedly a case of circumstantial evidence. For a conviction to be ordered on the basis of the circumstantial evidence collected by the prosecution the law is well settled. Each and every link in the chain of the evidence set up by the prosecution must be proved; only then can the conviction of the appellant be founded.

20 The trial judge while convicting the appellant has relied largely upon the version of PW-1 to whom an extra-judicial confession had been made by the appellant. Testimony of this witness shows that he was running a TSR for the last 20-25 years. On the intervening night of 18-19.01.2006 at about 2.30-3.00 a.m. while he was standing at bus route no.803 of Khayala Village along with his TSR waiting for passengers one person approached him to hire his TSR. The said person was identified by PW-1 as Radhey Shyam. Version of PW-1 being that the appellant disclosed to him that he had killed his wife, her dead body was lying at his house at village Chaukhandi; he wanted to dispose it off in the ganda nala; the appellant had offered him a sum of Rs.300/- as hire charges for the said purpose. The appellant thereupon boarded his TSR and proceeded towards the residence of the appellant; on the turn of Chand Nagar Mod some police officials were found coming on a two wheeler scooter; PW-1 signaled them to stop; he narrated the incident to the police officials. One out of the two police officials sat in his TSR and accompanied him and appellant to the spot. On reaching the residence of the appellant and on entering the house the dead body of a female was found lying on the floor; it was identified by the appellant as that of his wife Pooja. Ex.PW-1/A statement of PW-1 was recorded. In a further part of his deposition PW-1 had deposed that the appellant had told him that he had committed murder of his wife as she was of a bad character.

21 In his cross-examination, PW-1 admitted that the appellant was not known to him; he used to park his TSR regularly at the same place

that is at bus stand of the bus route no.830, Village Khayala; he was on duty between 5.00-5.30 p.m. to 7.00-7.30 a.m. He denied the suggestion that he had made this statement Ex. PW-1/A at the asking of the police; he further denied the suggestion that the appellant had gone to the police station to lodge a complaint for the murder of his wife but he was falsely implicated; he also denied the suggestion that the appellant had not made any extra-judicial confession to him.

22 This version of PW-1 evidences that it was a regular routine on the part of PW-1 to wait for passengers between 5.00-5.30 p.m. to 7.00-7.30 a.m. at bus stand of bus route no.830, Village Khayala to ply passengers. No suggestion has been given to him that he was not waiting at the aforementioned bus stand on the said date. PW-8 (SI Jaipal Singh) who had conducted the initial investigation of the case has stated that the PW-1 met him in his TSR about 50 paces from the spot; so also is the version of PW-16 (constable Vinod) who has also stated that PW-1 had met him 100 yards from the spot; meaning thereby that the place where the appellant had gone to hire the TSR was proximate and close to his residence.

23 This is the foremost piece of evidence which has been collected by the prosecution to nail the appellant.

24 An extra-judicial confession is a confession which is made by a party elsewhere than before the police, magistrate or in court; such a confession if made voluntarily is receivable in evidence but has to be proved in accordance with law like all other facts. Whether or not the confession is voluntary depends upon the facts and circumstances of

each case. Merely because an extra-judicial confession has been made before a stranger, it would not be sufficient to hold that it has not been properly proved.

25 The Supreme Court as early as in 1954 in the judgment of Rao Shiv Bahadur Singh Vs. State of Vindhya Pradesh 1954 CriLJ 910 as reiterated in Maghar Singh Vs. State of Punjab AIR 1974 1975 SC 1320 had held that the evidence which is in the form of extra-judicial confession made by the accused to the witnesses cannot be always termed to be a tainted evidence; corroboration of such evidence is required only by way of abundant caution; if the court believes the witness before whom the confession is made and is satisfied that the confession was true and voluntarily made, then a conviction can be founded on such evidence alone.

26 In State of Andhra Pradesh Vs. Kanda Gopaludu AIR 2005 SC 3616 relying upon the case of Gura Sinah Vs. State (2001) 2 SCC 205 the Apex Court in this context had noted as follows:

"It is settled position of law that extrajudicial confession, if true and voluntary, it can be relied upon by the court to convict the accused for the commission of the crime alleged. Despite inherent weakness of extrajudicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and to whom it is made in the circumstances which tend to support the statement.

27 In Narayan Singh v. State of M.P., 1985Cri LJ1862, the Apex Court had cautioned:

“It is not open to the court trying the criminal case to start with a presumption that extrajudicial confession is always a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak for such a confession. The retraction of extrajudicial confession which is a usual phenomenon in criminal cases would be itself not weaken the case of the prosecution based upon such a confession.

28 In Kishore Chand v. State of H.P., 1990Cri LJ2289 the Apex Court made the following observations in this context:

“An unambiguous extrajudicial confession possesses high probative value force as it emanates from the person who committed the crime and is admissible in evidence provided it is free from suspicion, and suggestion of any falsity. However, before relying on the alleged confession, the court has to be satisfied that it is voluntary and is not the result of inducement, threat or promise envisaged under Section 24 of the Evidence Act or was brought about in suspicious circumstances to circumvent Sections 25 and 26. The Court is retired to look into the surrounding circumstances to find out as to whether such confession is not inspired by any improper or collateral

consideration or circumvention of law suggesting that it may not be true. All relevant circumstances such as the person to whom the confession is made, the time and place of making it, the circumstances in which it was made have to be scrutinised. To the same effect is the judgment in Baldev Raj v.State of Haryana, 1990CriLJ2643.”

29 After referring to the judgment in Piara Singh v. State of Punjab, 1977CriLJ1941 the Supreme Court in Madan Gopal Kakkad v.Naval Dubey, [1992]2SCR921 held as follows:

“The extrajudicial confession which is not obtained by coercion, promise of favour or false hope and is plenary in character and voluntary in nature can be made the basis for conviction even without corroboration.”

30 Thus what emanates from the aforementioned proposition of law is that an extra-judicial confession may be relied upon if properly proved. The Supreme Court has in fact gone on to enunciate that the law does not require that the evidence of an extra-judicial confession in all cases must be necessarily corroborated. In fact corroboration of an extra-judicial confession is required only as a matter of abundant caution.

31 Testimony of PW-1 who is the witness to this extra-judicial confession has already been noted supra. There is doubt that he is a stranger to the appellant but the circumstances of the case show that there was no option with the appellant but to disclose to PW-1 about the

crime having been committed by him as in no other way could he have hired his TSR to dispose of the dead body of his wife. The appellant also could not allow the dead body to rot in his residence; he had necessarily to dispose it off. He was in a desperate and tight situation. The appellant was also in an inebriated condition; this has come in the evidence of PW-1. In these circumstances the appellant had no other alternative but to blurt out the truth to PW-1 in order that the dead body could be removed from his residence.

32 Testimony of PW-1 is in fact clear and cogent; it was also not by chance that he was waiting for passengers at the bus route of 830 on the aforementioned date. It has come in his version that this was his regular routine; no suggestion has also been given to him that this was not his regular routine. PW-8 (SI Jaipal Singh) and PW-16 (constable Vinod) had met PW-1 when he was on the way to the spot along with the appellant and they have also corroborated the testimony of PW-1 that PW-1 had narrated the fact that the appellant had disclosed to him that he had committed the murder of his wife and he wanted to dispose of her dead body; for this purpose he had hired the TSR of PW-1.

33 In this scenario, the extra-judicial confession made by the appellant to PW-1 and version of PW-1 being firm and stout on all grounds stands proved. There was also no reason as to why PW-1 would have falsely implicated the appellant; he had no enmity or personal grudge against the appellant; he was not a planted witness as is the bald suggestion given to him.

34 PW-2 the factory owner where both the appellant and his wife

were working did not support the version of the prosecution in toto. In his deposition on oath in court, PW-2 has stated that a confession had been made before him by the appellant that his wife committed suicide; this version of PW-2 was opposed to his version which he had given before the police. He had been cross-examined on this count. He, however, stuck to this ground. Testimony of PW-2 on oath in court did not advance the prosecution version in this count. However, testimony of PW-2 otherwise remained unchallenged on the score that both the appellant and Pooja were working as co-workers in his factory. His further version is to the effect that Pooja had left the factory at 7.30 p.m. and the appellant followed her at about 8.40 p.m. i.e. about one hour and ten minutes later. Both of them returned to their residence. This is also admitted by the appellant in his statement under Section 313 Cr.P.C. of the Cr.P.C.

35 The tenanted room where the appellant and his wife were living was a jhuggi owned by Deep Chand (PW-3). The scaled site plan Ex.PW-5/A shows that this room was in occupation of the appellant and Pooja and was divided by a passage from the room of Deep Chand. Another room owned by Deep Chand was in occupation of another tenant by the name of Ashok. PW-8 and PW-16 have deposed that when they reached the spot accompanied by the appellant and PW-1 they entered the room in a routine manner, there were no signs of any forced entry or breaking off any locks or window panes. No house trespass or missing articles were noted.

36 Thus what has been established by the prosecution is that at the

time of the incident the appellant and his wife were alone in the room. The post mortem had been conducted at 12.30 p.m. on 20.7.2006 and time since death was approximated back to 1½ days; thus suggesting that the crime was committed around mid-night of the intervening night of 18-19.01.2006. There was no other person in the occupation of the room except the appellant and his wife. At the cost of repetition and as noted supra there was no forced entry into the room; there was no outside intervention. In these circumstances, the appellant had to explain as to how and in what circumstances his wife was killed in this intervening period when he was alone in the room with her.

37 The defence taken by the appellant in this regard in his statement under Section 313 Cr. P.C. is relevant. In answer to question no.36 he has admitted that his wife had left the factory at 7.30 p.m. and he had followed her at around 8.45 p.m. When he reached his house there was no light and his wife was lying on the floor in an unconscious condition. On seeing this, he immediately rushed to his factory to inform the owner of the factory; on the advice of the owner (PW-2) he rushed to Khayala Chowki to inform the police where he had been falsely implicated. He later on came to know that his wife had died.

38 This conduct of the appellant as explained by him in his statement under Section 313 Cr. P.C. is not only unnatural but highly obnoxious; even presuming that when he reached his house, he found his wife in an unconscious condition; the natural reaction of any husband would be to rush her to a hospital or to provide medical help to her; it would not be to meet his factory owner and then to go to the police station without

any knowledge about her hapless condition. This explanation of the appellant is also wholly inconsistent with the version of PW-2 (a hostile witness) who had deposed that the appellant had told him that his wife had committed suicide by hanging herself with a rope. Thus this explanation furnished by the accused in his statement under Section 313 Cr. P.C. is established to be a false version; it persuades the court to treat it as an additional link in the chain of circumstantial evidence to be read against the appellant.

39 The fact that the dead body of Pooja had been recovered at the instance of the appellant is also an admitted fact. It was the appellant who had taken the police party i.e. PW-8 and PW-16 accompanied by PW-1 to his house where the dead body of his wife was lying on a dari.

40 The doctor who had conducted the post mortem had opined that the cause of death was asphyxia caused by strangulation with a rope. Pursuant to the disclosure statement of the accused the appellant has also got recovered this jute rope from the khandahar of his house; it was taken into possession vide memo Ex. PW-15/C. This was in the presence of PW-15 Inspector O.D.Yadav. PW-16 has corroborated the version of PW-1 on this count; no cross-examination has been effected of either of the aforementioned witnesses on this score; not even a single suggestion has been given that this jute rope had not been recovered pursuant to the disclosure statement of the appellant. The ligature mark noted on the dead body of the victim was opined by the post mortem doctor (PW-16) to have possibly been caused by such a rope. No cross-examination of PW-16 has also been effected.

41 The motive for the crime has been depicted by the prosecution in the disclosure statement of the appellant wherein he had disclosed that his wife used to talk to her co-workers which was the reason for the annoyance and frustration to the appellant. However, this version in the disclosure statement of the appellant is hit by bar of Sections 25 and 26 of the Evidence Act and except to the limited extent that it leads to the discovery of a fact; such a disclosure statement cannot be read. This disclosure statement thus has to be ignored.

42 However, the version of PW-1 supports the prosecution on motive. PW-1 in his deposition had deposed that the appellant had told him that he had committed the murder of his wife as she was of a bad character. Thus in view of this clear version of PW-1 on this count, the trial judge had returned an incorrect finding that the motive was not established. It stood established from the testimony of PW-1. PW-2 was hostile on motive and his evidence was rightly ignored by the trial judge.

43 Thus what has been established by the prosecution is as follows:

- i. An extra-judicial confession had been made by the appellant to PW-1; it was followed by the recovery of the dead body from his house.
- ii. The conduct of the appellant was wholly un-natural and obnoxious; on noting his wife was lying in an unconscious condition, he chose to go to his factory owner and then to the police-station; he did not as a natural course provide her medical help.

- iii. The appellant was admittedly alone in the house with his wife when the incident occurred; there were no sign of any forced entry. It was for the appellant to explain.
- iv. The explanation furnished by him in his statement under Section 313 Cr. P.C. is wholly dis-satisfactory; adverse inference is drawn against him on this count.
- v. Motive of the crime has emanated in the version of PW-1. The appellant was always suspicious of the character of his wife who was also working as co-worker in the factory where the appellant was employed.

44 All the links in the chain of evidence stood complete. Prosecution has been able to establish that it was the appellant who had committed the murder of his wife. Appeal is without any merit. Dismissed.

INDERMEET KAUR, J

KAILASH GAMBHIR, J

NOVEMBER 06, 2013

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