

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

Judgment delivered on: January 09, 2014

+ **CRL.A. 321/2011**

RAJ KUMAR

..... Appellant

Through: Mr. S.B. Dandapani, Advocate,
Advocate

versus

STATE (GOVT. OF NCT) OF DELHI

..... Respondent

Through: Mr. Sunil Sharma, APP for the
State with Inspector Dinesh
Kumar, Police Station Tilak Marg,
New Delhi

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MS. JUSTICE SUNITA GUPTA

JUDGMENT

KAILASH GAMBHIR, J.

1. Challenge in the present appeal is the impugned judgment and order on sentence dated 02.12.2009, whereby the learned District Judge had convicted the appellant for the commission of offence punishable under Section 302 of Indian Penal Code, 1860(hereinafter referred to as “IPC”) and sentenced him to imprisonment for life together with fine of Rs.20,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year.

2. The case of the prosecution as it was unfolded in the charge sheet

can be summarised as under:-

“On 25th and 26th February at around 1:30 a.m (night) Puja(PW-5) and the children of the deceased got up hearing cries of Usha (deceased) and they saw that accused \ was stabbing the deceased Usha with a knife, Komal,PW-4, daughter of the deceased grappled with her father (accused) and Puja gave a push to Usha to send her out. Thereafter the accused gave a push to PW-5 and PW-4l. The accused after going outside stabbed Usha several times. Thereafter the accused came inside the room, changed his clothes and went away, he also threw the knife outside the house.”

3. To prove its case, the prosecution had examined 27 witnesses. After the evidence of prosecution, statement of accused was recorded under Section 313 of Cr.P.C., wherein he denied his involvement in the commission of the offence. The accused however did not lead any evidence in his defence.

4. Addressing arguments on behalf of the appellants, Mr. S.B. Dandapani, Advocate for the appellant strongly contended that the judgment passed by the learned trial court is based on conjectures and surmises, totally unsupported by the facts and circumstances of the case. Learned counsel for the appellant further submitted that the learned trial court had failed to appreciate the fact that there was no motive on the part of the appellant to commit the murder of his wife and in the absence of any strong motive, there could be no reason for the husband to ruin not

only his own matrimonial life but also the lives of his children. Learned counsel for the appellant further argued that the appellant was not even present on the intervening night of 25th and 26th February and appellant has been roped in for the offence which was committed by someone else merely on the statement of Ms. Puja (sister of the deceased) who very well knew that her sister was having an illicit relationship with some other person. Learned counsel for the appellant also argued that the learned trial court had also given undue weightage and credence to the statements of the child witnesses who could be easily tutored by the sister and other family members of the deceased. Learned counsel for the appellant also argued that there are material contradictions in the testimonies of prosecution witnesses but the same were totally ignored by the learned trial court. Based on these submissions, learned counsel for the appellant urged that there exists no incriminating evidence against the appellant and the judgment passed by the learned trial court is perverse and against the settled principles of law. Learned counsel for the appellant thus, prayed that such a perverse judgment and order on sentence be set aside by this court.

5. The said contentions raised by learned counsel for the appellants

were strongly refuted by Mr. Sunil Sharma, learned Additional Public Prosecutor for the State. Learned APP for the State submitted that the case set up by the prosecution is based on cogent and clinching evidence of eye witnesses fully corroborated by the circumstantial evidence and the medical evidence and therefore, no fault can be found in the well reasoned judgment passed by the learned trial court holding the appellant guilty for the commission of the offence punishable under Section 302 of IPC. Learned APP for the State thus prayed that this court in the exercise of appellate power may not interfere with the view taken by the learned trial court as it is based on unimpeachable evidence of the eye witness and the circumstantial evidence proved through various prosecution witnesses.

6. We have heard learned counsel for the parties at considerable length and given our thoughtful consideration to the arguments advanced by them. We have also perused the record of this case and closely scrutinised the evidence led by both the parties.

7. In every criminal trial, the two important points that are to be decided are firstly whether a crime has been committed or not and if yes, then who committed the crime. After any crime is reported to the police

or it comes to their knowledge through any source, the investigation begins. After the investigation completes, challan is filed by the police in the court and thereafter if the Court finds that there is sufficient evidence to initiate proceedings against the accused, the Court frames the charges and thereafter the trial begins its journey. The trial judge discharges a very onerous public duty to see that no innocent man is punished and no guilty man is able to escape from the clutches of law. For arriving at an ultimate decision, the trial judge is required to properly scrutinise, evaluate and analyse the entire evidence and material placed on record and then give its dispassionate and objective findings. It is also a well settled principle that while exercising the appellate powers, the judgment passed by learned trial court will not be set aside unless the appellant is able to satisfy the court that the judgment passed by the learned trial court is based on wrong appreciation of facts or non consideration of any material piece of evidence or mis-interpretation of any law rendering the judgment as perverse.

8. The case in hand involves the gruesome murder of wife at the hands of her husband on the intervening night of 25th and 26th February. It was a small tenement of one room accommodation where the deceased

was residing alongwith her husband and three children and her sister – Puja. The case against the appellant was registered on the statement of Puja (PW-5) who in her statement proved on record as Ex.PW-5/A stated that she was residing in the servant quarter No.77, Jodhpur House, alongwith her sister and brother-in-law for the last two years. On the intervening night of 25th and 26th February, Puja along with the children of her sister were sleeping in one room. At about 1.30 a.m., she and the children of her sister got up, on hearing the noise and what she and the children, saw was that the appellant attacked her sister – Usha with a knife in his hand and at that time, Komal, daughter of the appellant grappled with him and Puja pushed her sister outside the house and tried to prevent the appellant from attacking the deceased any further, but the appellant pushed Puja and Komal aside and started stabbing the deceased. Thereafter, he went inside the house, changed his clothes and left the place. He also threw the knife outside the house. Puja in her court deposition fully supported her first statement made before the police on the basis of which the rukka was prepared and an FIR was registered against the appellant. The police was informed about the alleged incident by some person in neighbourhood where-after; the police reached the

place of incident and immediately removed the deceased to the hospital. Police had also seized the knife from the spot and prepared its sketch (Ex.Pw-5/B). The other articles were also seized by the police vide seizure memo proved on record as Ex.PW-5/C, Ex.PW-5/D and Ex.PW-5/E. The statement of PW-5 – Puja and that of other children were also recorded under Section 164 of Cr.P.C. by the Magistrate. The other children namely Komal, Vikas and Tarun, fully corroborate their own statements given under Section 161 of Cr.P.C. and the testimony of Puja (PW-5). Despite exhaustive cross-examination of these witnesses, the defence failed to create any dent to discredit their testimonies. The learned trial court before recording the deposition of child witnesses duly tested their capability and understanding for giving rational answers. All these witnesses and eye witnesses and their presence during intervening night of 25th and 26th February in the one room accommodation was quite natural and their presence has also not been disputed by the accused and therefore, there is no reason to disbelieve the eye witness account given by these witnesses, who also remained consistent, firm and coherent in their court depositions. Learned trial court is right in saying that no discrepancies were found in the cross-examination of these witnesses so

as to doubt their versions and these closely related witnesses had no ulterior motive to falsely implicate the accused and also their testimonies inspired complete confidence.

9. The learned trial court has separately discussed the circumstantial evidence under the headings; (a) Motive; (b) Recovery of knife; (c) Recovery of Banyan; (d) Abscondence; and (e) Absence from duty, and learned counsel for the appellant has failed to persuade us to take any contrary view to the reasoning given by the learned trial court under these various heads of circumstantial evidence.

10. On motive, learned trial court found that Puja (PW-5) in her court deposition attributed the motive to the accused as he used to suspect the character of his wife and for that reason he used to give her beatings. Learned trial court also referred to the deposition of Komal (PW-4) who also testified on the same lines that the main motive behind the said murder was that the accused used to suspect the character of her mother. Learned trial court also referred to the deposition of Mithilesh (PW-24), who also testified that the deceased had disclosed to her on 22nd April 2008 that her husband used to quarrel with her. Learned trial court also pointed out that no counter suggestions were given to any of these

witnesses on all these testimonies and therefore, there was no reason to disbelieve their uncontroverted and unchallenged testimonies.

11. On the 'recovery of knife' also learned trial court rightly held that the knife (Ex.P-1) was seized by the police from the spot vide seizure memo No. Ex.PW-5/C and the recovery of knife at the spot was not challenged by the accused. The court also referred to deposition of the Dr. Devender Kumar Atal (PW-1), who in his deposition stated that the injuries found on the person of the deceased were possible with the weapon which was shown to him. The learned trial court also referred to the CFSL report, proved on record as Ex.PW-25/B and Ex.PW-25/C, giving an opinion that the blood group as was found on the knife Ex.P-1 matched the blood group of the deceased which was found on her salwar and her blood stained gauz.

12. On the 'recovery of banyan' also, the learned trial court was right in saying that as per the CFSL report the blood group which was detected on the banyan, was the same blood group which was detected on the clothes of the deceased and thus this finding also remained unchallenged and unassailed.

13. On 'Abscondance', the reasoning given by the learned trial court is

unassailable. Learned trial court was right in observing that the accused had failed to prove as to what forced him to flee away to Village Jaudapur and also his unexplained conduct of not lodging any police complaint about the gruesome murder of his wife, is another incriminating evidence against the appellant.

14. On another piece of circumstantial evidence with regard to 'absence on his duty' on 26th February 2009, the learned trial court referred to the deposition of Jai Kishan (PW-14), who was the employer of the accused, confirmed the absenteeism of the accused from the duty on 26th February 2009 and in the cross-examination, no reason was assigned by the accused for remaining absent on 26th February 2009.

15. The prosecution has also successfully proved the intention on the part of the accused in committing the murder of his wife with the help of post mortem report. As per the post mortem report, the accused had inflicted 11 incised/stab wounds of various dimensions on the person of the deceased. The cause of death as opined by the post mortem doctor was due to haemorrhage shock as a result of multiple injuries and all injuries were ante mortem in nature and fresh in duration caused by sharp cutting weapon. It was also opined that all injuries together and injury

No.8 and 9 individually proved fatal in the ordinary course of nature. Infliction of 11 incised/stab wounds on the person of the deceased clearly proves the intention of the accused and the learned trial court was right in observing that the facts and circumstances proved on record established beyond any doubt that the only intention of the accused was to murder the deceased by inflicting the injuries which were sufficient in the ordinary course of nature to cause her death.

16. Learned trial court is further right in observing that the defence failed to adduce any evidence to create any dent in the prosecution case. The accused also failed to state about his whereabouts at the time of commission of the crime besides having failed to attribute any specific motive against the prosecution witnesses to falsely implicate him at the costs of believing the actual culprits.

17. This is an open and shut case where every piece of evidence proves the guilt of the accused in the commission of the said crime. The defence had miserably failed to create any dent in the prosecution case and in fact the case set up by the prosecution remained unchallenged and unimpeachable. We also find no reason that the children of the accused will come forward to falsely implicate their own father even after being

deprived of the protective shelter of their mother. The defence has also not disputed the fact that PW-5, sister of the deceased was residing in the same house for a period of about two years from the date of incident and there could be no reason for her to falsely implicate her brother-in-law, if the crime was committed by someone else. Learned trial court had objectively and dispassionately gone into all the aspects of the case and we do not find any illegality or perversity in the findings returned by him. Accordingly, finding no merit in the appeal filed by the appellant, the same is hereby dismissed.

18. Copy of this order be sent to Jail Superintendant for information.

KAILASH GAMBHIR, J.

SUNITA GUPTA, J.

JANUARY 09, 2014

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