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IN THE HIGH COURT OF DELHI AT NEW DELHI
Crl. Appeal No. 433/2010

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Reserved on: 8th July, 2014
Date of Decision: 5th August, 2014

Puran Verma

....Appellant

Through

Mr. Ajay Verma and Ms. Neha Singh,
Advocates.

Versus

State (NCT) of Delhi

...Respondent

Through

Mr. Rajat Katyal, APP.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J.

By the impugned judgment dated 30th October, 2009, appellant Puran Verma stands convicted for having murdered his wife Sangeeta on 8th June, 2008, at their residence on first floor of property bearing No. 20-D Nawada, Delhi. By order on sentence dated 31st October, 2009, appellant has been sentenced to life imprisonment and directed to pay fine of Rs.10,000/-, in default of which he has to undergo rigorous imprisonment for a period of six months. Benefit of Section 428 Cr. P.C. has been granted.

2. The factum that Sangeeta had died homicidal death, is not disputed and stands proven from the testimonies of Dr. Rishi, CMO

DDU Hospital (PW3) and Dr. B.N. Mishra (PW6). Dr. Rishi (PW3) had deposed that on 8th June, 2008 at about 1.30 PM, ASI Ram Gopal (PW13), of PCR, had brought one patient who was examined by Dr. Indra Bahadur, working under his supervision. The patient Sangeeta was declared 'brought dead' as was recorded in MLC (Ex. PW3/A). Dr. Indra Bahadur had left services and his whereabouts were unknown, however his signatures and hand writing were identified by Dr. Rishi (PW3).

3. Dr. B.N. Mishra (PW6) had conducted post mortem on 9th June, 2008 and had submitted his report (Ex. PW6/A). He had opined the cause of death was asphyxia caused by ligature strangulation with prior manual smothering. There were marks or indication of physical assault on many parts of Sangeeta's body. Six external injuries in addition to ligature marks recorded by him are as under:

- "1. Both upper and lower lips were found bruised, with lower lip has a laceration of size 5x3 cms with irregular margin and dark reddish colour with multiple indentation of teeth marks present at inner aspect of lower lip.
2. Two-three crecentric shape nail marks present at chin.
3. Contusion of size 5X4 cms present at right side of forehead with dark reddish colour blood clot on section.
4. Abrasion of size 3x2 cms present over right cheek bone.

5. Abraded-bruise (10x8 cms) present at left gluteal region (buttock).

6. Lacerated wound of size 5x1½ cms x deep to bone present at occipital region of head.”

4. In his cross-examination, Dr. B.N. Mishra(PW6) was questioned and he highlighted the difference between ligature strangulation and smothering and opined that some features were common. In this case, PW6 opined that cause of death might be smothering also, but smothering and ligature strangulation were almost simultaneous. When the time gap between smothering and ligature strangulation was just 2/3 minutes, specific conclusion was impossible. It was suggested on behalf of the appellant that two persons could have committed the act of ligature strangulation and smothering? Dr. B.N. Mishra (PW6) opined that this was possible, but even one person could have caused the injuries in the present case.

5. The main issue and question raised, is whether the appellant Puran Verma was the perpetrator of the said injuries causing unnatural and homicidal death of his wife Sangeeta?

6. Thus, it is accepted and admitted position that the deceased Sangeeta had died of asphyxia at her matrimonial home i.e. 20-D Nawada, Delhi on 8th June, 2008. As per the Gregorian Calendar, 8th

June, 2008 was a Sunday. ASI Ram Gopal (PW13) has deposed that he was posted in PCR, West Zone and was on duty with PCR Ambulance. At about 12.38 PM had received a message regarding scuffle in the property mentioned above. On reaching at the place of occurrence, PW13 found that crowd had collect and on entering the room on the first floor, Sangeeta was found lying on the floor. The appellant was present and sitting in the same room. Ram Wati (PW1) and Sanjay (PW2) mother and brother of Sangeeta were also present. Sangeeta did not have clothes on her body, rather she had been covered with a sheet. They shifted Sangeeta by putting her in PCR Van and departed for DDU Hospital. On the way, PW13 met ASI Jagpal and handed over custody of the appellant to him. Thus, the presence of the appellant at his residence at about 12.38 PM on 8th June, 2008 has been deposed to and positively asserted by PW6. As noticed below, Ram Wati (PW1) and Sanjay (PW2) have ventilated and affirmed on the presence of the appellant and attributed and implicated the appellant as the perpetrator.

7. Appellant, however, submits that his presence at the residence in the morning of 8th June, 2008 when the crime was committed has not been established and proved beyond doubt.

8. On the said aspect, we have direct evidence in form of Master Aman (PW8), son of the appellant and the deceased. He was aged about 6 years at the time of his deposition in court on 24th December, 2008. The court conscious that it was recording statement of a child witness, had asked introductory questions to ascertain and ensure that PW8 was capable of giving logical and coherent answers and to remove doubts and affirm that he had not been tutored. This was necessary as Master Aman (PW8) was staying with his maternal grandparents after the occurrence. Master Aman (PW8) has stated that he used to live with his parents when his mother was alive and he knew that his father was facing trial in the case. In categorical and clear terms, Master Aman (PW8) has stated that his father, i.e. the appellant, had killed his mother. He did not know as to why his father had killed her but claimed that his father had used a string, hammer and screwdriver. If we accept and believe the statement of Master Aman (PW8), the appellant cannot escape and break away from his conviction.

9. The contention of the appellant is that Master Aman was not present at the spot, as at that time i.e. on 8th June, 2008, he was residing with his maternal grandparents. It is submitted that Investigating Officer had recorded Master Aman's (PW8) statement

under Section 161 Cr.P.C. on 17th August, 2008 i.e. more than two months after the date of occurrence. In the said statement Master Aman (PW8) had not referred to hammer or screwdriver. Further, Ram Wati (PW1), Sanjay (PW2), Jagdish Verma (PW10) and Jyoti (PW5) have not in clear and categorical terms, deposed about presence of Master Aman (PW8) in the said house at the time of occurrence. Therefore, the appellant submits that the trial court should not have relied upon statement made by Master Aman (PW8) as he could have been easily tutored and made to implicate the appellant by his maternal grandparents and others.

10. It is correct that Investigating Officer SI Rajbir Singh (PW15) had recorded the statement of Master Aman (PW8) under Section 161 Cr.P.C. on 17th August, 2008. PW15 had taken over investigation from Insp. Dev Raj (PW14), the first Investigating Officer, in the first week of August, 2008. In this regard, submission on behalf of the State is that there was a lapse on the part of the first Investigating Officer i.e. Insp. Dev Raj Singh (PW14) in not recording PW8's statement under Section 161 Cr.P.C. but the appellant cannot take benefit of the same. There is substantial delay in recording of the statement of Master Aman (PW8) under Section 161 Cr.P.C., but the question which arises for

consideration is whether we should discard and disbelieve the court deposition of Master Aman (PW8) for this reason? The submission and question raised, cannot be answered without first adjudicating and deciding whether or not PW8 was present at home with his parents/mother when the violence/crime took place. If and once we accept presence of Master Aman (PW8) at the residence which is the place of occurrence, then the delay in recording Section 161 Cr.P.C. statement by itself may not be a ground to discard or disbelieve the court deposition. Credibility, trustfulness and like aspects, would then require consideration. Delay raises suspicion but in the facts of the present case, we do not think that this delay can be a ground to disbelieve and disregard the court deposition of Master Aman (PW8).

11. Presence of Master Aman (PW8) in his own house with his parents on Sunday was natural and normal. It would not be a matter of chance. A young child would like to be with his mother and father. Ram Wati (PW1) and Jagdish Verma (PW10) i.e. grandparents of Master Aman (PW8) during their cross-examination, were not confronted or suggested that Master Aman was with them on the night intervening 7th and 8th June, 2008. No such suggestion was also given to Sanjay (PW2), maternal uncle of Master Aman (PW8). It was not suggested that

Master Aman was not present with the appellant and the deceased at their house when the crime occurred. The aforesaid stand was taken by the appellant belatedly when his statement under Section 313 Cr.P.C. was recorded on 26th August, 2009. No doubt, Ram Wati (PW1) had not specifically deposed in her examination in chief about the presence of the appellant at the place of occurrence but this can be explained as initially the Investigating Officer did not record statement of Master Aman under Section 161 Cr.P.C. Ram Wati (PW1) has deposed what Master Aman had told her regarding the occurrence. She has thus accepted presence of Aman (PW8) at the spot. Sanjay (PW2) has deposed that the appellant, Sangeeta and Aman (PW8) had left for their house on 7th June, 2008. Thus he has deposed about Aman's presence. Master Aman's statement in the court was recorded on 24th December, 2008. On 28th May, 2009, Jagdish Verma (PW10) grandfather of Aman (PW8) had deposed in the court and testified that when he reached at the place of occurrence, his daughter was being brought down. His wife Ram Wati (PW1) and son Sanjay (PW2) were already there. Master Aman (PW8) started residing with them from the date of incidence. Jyoti (PW5), whose deposition we shall be referring in some details, in clear and categorical terms had stated in her cross-

examination that son of the deceased was also in the house when the door opened and the deceased Sangeeta was found in an injured condition. The above stated assertion was made in the cross-examination and remained unchallenged.

12. In view of the aforesaid position, we do not think that there is any ground or reason to disbelieve or be apprehensive that Master Aman (PW8) was not present in the house when the occurrence had taken place. The delay in recording his version on the part of the Investigating Officer was a lapse and a defect in investigation and cannot and should not be treated as a ground to completely discard or disbelieve Aman's (PW8) court deposition. However, it does appear that Master Aman (PW8) has marginally exaggerated the facts by claiming that his father had also hammer and screwdriver. The said articles were not seized, though it is clear from the post mortem report (Ex. PW6A) that the deceased Sangeeta had suffered several external injuries.

13. In order to ensure ourselves on culpability of the appellant, we would like to refer to corroboration in the form of other evidence. First, we would like to refer to the testimonies of Ram Wati (PW1),

Sanjay (PW2), Jyoti (PW5) and Jagdish Verma (PW10) and then the call details which support the prosecution case.

14. Sanjay (PW2), is the complainant and first informer who had made statement (Ex. PW2/A) and Ram Wati (PW1) had claimed that they were the eye-witnesses to the actual act of strangulation committed by the appellant. We are inclined to accept the submission of the appellant that PW1 and PW2 were not the eye-witnesses and had reached the spot when the occurrence was taking place inside the room or immediately thereafter. Ram Wati (PW1) and Sanjay (PW2) possibly did not see the appellant strangulating the deceased, otherwise they would have caught hold of the appellant, specially, when there is evidence to show that the deceased was not wearing clothes or they were torn. They have deposed that the room was locked and they were prevented/obstructed. However, we agree with the prosecution that the appellant was present at the spot and was confronted by the said witnesses, when they saw Sangeeta.

15. Ram Wati (PW1), Sanjay (PW2) and Jagdish Verma (PW10) are in seriatim that the deceased Sangeeta had married appellant Puran Verma about 8 years prior to the date of occurrence but their matrimonial life was turbulent with repeated and constant quarrels.

Appellant kept doubting chastity of Sangeeta. On 7th June, 2008, the appellant had come to the parental home of Sangeeta and had taken her with him to 20-D Nawada, Delhi. This was after assurance by the appellant that he would look after and not beat or ill treat Sangeeta. Sanjay (PW2) has deposed in detail about the happenings on 7th June, 2008 and how after the patch-up, both of them along with their son left for their house. He deposed that on 7th June, 2008, appellant, Sangeeta and their son had left for their house in the evening. Next day in the morning at about 9-10 AM he received a call from Jyoti (PW5) on his mobile that the appellant and Sangeeta were quarrelling. At that time, he was not at his residence and upon reaching his house he found that his mother (PW1) was not there. She came after half an hour. He told her about the call received from Jyoti. They decided to go to matrimonial home of Sangeeta and reached within 20-25 minutes. He made a call to police on number 100. Jagdish Verma (PW10) also reached the spot. Appellant was present there. Deceased Sangeeta did not have clothes on her body, which were lying besides. Police came recorded the statements, seized the evidence etc. In his cross-examination, Sanjay (PW2) has stated that they reached the house of the accused in 45 minutes after his mother

had arrived and that they reached the matrimonial house of Sangeeta between 11 to 11.30 AM. He had asked his mother to go upstairs as the rickshaw puller had to be paid. Both of them had shouted for help. He had given his number to Jyoti, neighbour of Sangeeta, two months prior to the incident.

16. Ram Wati (PW1) has deposed that on 8th June, 2008, on returning from the market, Sanjay (PW2) told her about the call received from Jyoti. She along with Sanjay (PW2) then proceeded to the matrimonial home of Sangeeta. On reaching there, she found Sangeeta lying on the floor. She was unconscious and was taken to DDU Hospital. Her clothes were in a torn condition and there were ligature marks on her neck. She has deposed that Aman (PW8) had told her that the appellant had beaten up Sangeeta and strangled her with a piece of cloth but this portion of statement of PW1 is inadmissible being hearsay. This assertion however corroborates that Aman (PW8) was present at home when the injuries were inflicted and suffered by Sangeeta. In her cross-examination, PW1 has stated that she had got the room door opened.

17. Jagdish Verma (PW10), as noticed above had reached the spot after sometime, on being conveyed information about Sangeeta. By

the time PW10 had reached, the police had already arrived and Sangeeta was in the process of being taken in the PCR van to DDU Hospital. He has, however, deposed about presence of the appellant at that time.

18. Master Aman (PW8) in his cross-examination had clearly stated that he had not gone to school and he knew Jyoti Aunt, who was their neighbour. Jyoti aunt and other neighbours came to the house when his parents were quarreling.

19. This brings us to the testimony of Jyoti (PW5). Her testimony has to be examined with care and caution as we have to decide whether to entirely or partly accept or reject her testimony. Jyoti (PW5) was certainly a neighbour and knew the appellant, Sangeeta and Aman (PW8). She has accepted that Sangeeta had met her on several occasions and observed that she had a good nature. Sangeeta used to complain about her husband that he had no income and did not give her money. Two days prior to the occurrence, Sangeeta had spoken to Jyoti (PW5) about her problem/troubles. She had asked Sangeeta to take police help. She had also tried to intervene and mediate between Sangeeta and the appellant. Sangeeta had brought money from her parents but the appellant had spent the money on a call girl. In spite of

her best efforts, the appellant continued to harass Sangeeta and at about 10 PM she had made a call to the police (reference it is apparent was to an occurrence, two days before the incident in question). Appellant was taken to the police station and was detained overnight. She had rung parents of Sangeeta, who had taken Sangeeta with them. Subsequently, she came to know from Sanjay (PW2) that appellant had been released. There was a patch up and Sangeeta along with her son came back to her matrimonial home. She had received telephone call from Sanjay (PW2) at 10.00 AM, enquiring about Sangeeta. She had not seen Sangeeta and suspected possible foul play. She asked Sanjay (PW2) to come. Both Sanjay (PW2) and his mother (PW1) came within 15 minutes. Appellant came downstairs and did not allowed them to go upstairs. Appellant had claimed that Sangeeta was not there and had gone to see a doctor. Jyoti (PW5), at that time had to leave as she had urgent work. She came back her house after one a half hour and straight away went to her house. Appellant had closed the door from outside with a latch. She had called the police on asking of Sanjay after she came to know that Sangeeta had died. She was cross-examined by the public prosecutor on certain aspect but denied that she had made a call to Sanjay (PW2) apprising him of the quarrel and beatings given to

Sangeeta. She also denied that she had gone inside the room of the appellant with Ram Wati (PW1) and Sanjay (PW2) and noticed that the clothes worn by Sangeeta were torn or had noticed that the appellant had put a string around the neck of Sangeeta and was pulling her. The aforesaid testimony of Jyoti (PW5) was recorded on 3rd December, 2008. Thereafter subsequent part of her testimony was recorded on 28th April, 2009 i.e. after a gap of more than four months. It is apparent that Jyoti (PW5) in her examination on 28th April, 2009 has oscillated substantially and somehow wanted to save and help the appellant, yet she found herself tied down and could not wriggle out from her earlier testimony and ultimately she had to speak and state the truth. Towards the end of her cross-examination, she accepted as correct that there was a quarrel, that she had dialed the number of Sanjay i.e. 9211134353 from her Cell No. 9212986572 and had made a call to police. She also accepted that she had spoken to Sanjay (PW2) earlier on telephone on 2-3 occasions but only once on the day of occurrence. She had informed the police and thereafter had left the spot. Subsequently, she corrected herself and stated that she did not remember the number of calls made, when confronted specifically in a question making reference to different calls on 8th June, 2008. She

went on to suggest that Sanjay (PW2) might have dialed number 100 from her mobile phone. She claimed that 2-3 neighbours might have also used her cell phone. In her cross-examination on behalf of the appellant, she went on to state that no enquiry was made from her, something which is completely unacceptable. The said part of her statement is completely false and a blatant lie as is clear from her statement at the end of her cross-examination by the counsel for the appellant. She has accepted as correct that police came at the spot and at the end of the cross-examination had deposed:-

“When the neighbour opened the kundi of the house of the accused and found the dead body, then, she started screaming loudly. Thereafter, lot of people collected there including myself. Thereafter, Sanjay and his mother were able to come up after pushing the accused. It is wrong to suggest that accused was not preventing the mother and brother of the deceased as she was not present there at all and came there later on. The son of the deceased was also inside the house when the door was opened up by that neighbour. It is wrong to suggest that the accused did not harass the deceased in the manner or at the date and time stated by me in my examination-in-chief. It is further incorrect to suggest that I have deliberately improved the facts of the case in order to implicate the accused as deceased was my friend. It is further incorrect to suggest that I was regular in touch with Sanjay 4-5 days before the incident on phone. (Voltd. I had talked to him on 06.06.08). I had talked to him on phone after the incident but that was with respect to the development of the case. It is further incorrect to suggest that no incident had taken place two days before the death of Sangita, as claimed by me in my examination-in-chief.”

20. It would be appropriate at this stage to refer to the call records (Ex. D-1) of telephone numbers 9211134353 of Sanjay (PW2) and 9212986572 of Jyoti (PW5). The call records were taken on record by the trial court vide order sheet dated 10th August, 2009 that the said documents could read in evidence.

21. The call records indicate that a number of calls were exchanged between the said two numbers on 7th June, 2008. However, we need not refer to the said call detail as it is not necessary. It shows and proves that Jyoti (PW5) and Sanjay (PW2) were constantly speaking and were in touch with each other. The first call exchanged between the two numbers on 8th June, 2008 was at 10.01 AM with a call being made by Sanjay (PW2) to Jyoti (PW5). This was followed by calls at 11.23 AM, 11.27 AM, 12.09 PM, 12.23 PM and 12.27 PM. A call was made to police from telephone no. 9211134353 at 12.30 PM. Calls were also exchanged between Jyoti (PW5) and Sanjay (PW2) at 12.49 PM and at 01.02 PM on 8th June, 2008. A number of calls were exchanged thereafter but again these are not relevant. The aforesaid call record details also give the location of the connected cell tower. Cell tower number 6811 was located near the residence of Sanjay (PW2). Calls from 10 to 11.27 AM were connected through tower No. 6811. Call at

12.09 PM was connected through tower No. 68A2. Calls thereafter till 12.49 PM were also connected through the same tower 68A2. Call at 01.02 PM was connected through tower No. 6720, showing movement. It is clear from the said tower details that till 11.27 AM on 8th June, 2008, Sanjay (PW2) was at his residence and thereafter at 12.09 PM reached at the place of occurrence and was connected with tower 68A2. The call details of telephone No. 9212986572 show and establish that the said cell phone in the morning on 8th June, 2008 was connected through tower no. 6451 and 68A2. 68A2 is the tower number with which the cell number 921134353 of Sanjay (PW2) was connected between 12.09 to 12.49 PM on 8th June, 2008. This shows and proves that Sanjay (PW2) and Ram Wati (PW1) were at the residence of the appellant between 12.09 to 12.49 PM. The cell tower details regarding mobile number 9212986572 also show that Jyoti (PW5) remained at her residence and around the place of occurrence till 11.59 AM as till then she was connected with Cell tower 68A2. Thereafter as stated in her court deposition, Jyoti (PW5) had left for urgent personal work and was connected with different tower numbers till 12.25 PM. Subsequently, she again got connected through tower number 68A2 at 12.27 PM on 8th June, 2008. This corroborates Jyoti's (PW5) version that she has

gone out for some time, but in the morning and subsequently was present at the place of occurrence.

22. In view of the aforesaid discussion, it is apparent and clear to us that we should accept Jyoti's (PW5) deposition that the appellant and the deceased Sangeeta were inside their room and quarrel had taken place in the morning. Jyoti (PW5) and Sanjay (PW2) had spoken to each other and thereafter Ram Wati (PW1) and Sanjay (PW2) reached the spot. On opening the door, they found that Sangeeta had been killed. There were ligature marks on her body. Clothes worn by Sangeeta were torn etc. Aman (PW8) was present in the room. It is, therefore, clear beyond doubt that the appellant was perpetrator who had committed the offence. The statement of Master Aman (PW8) who has seen the occurrence, is true and correct and deserves to be accepted.

23. In view of the aforesaid discussion, we do not find any merit in the appeal. The conviction and sentence of the appellant is maintained. The appeal is dismissed.

(SANJIV KHANNA)
JUDGE

(V. KAMESWAR RAO)
JUDGE

August 5th, 2014
Kkb/VKR