

\$~14

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: December 03, 2014

+

CRL.A. 812/2011

JITENDER @ BUNTY

..... Appellant

Represented by: Mr.Biswajit Kumar Patra, Advocate

versus

STATE (GOVT. OF N.C.T)

..... Respondent

Represented by: Mr.Varun Goswami, APP
SI Md.Horoon, P.S.Tilak Nagar

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. Process of criminal law was set into motion when DD No.54A, Ex.PW-5/A, was recorded at 3:30 hours (middle of the night) on February 18, 2008 by the duty officer of PS Tilak Nagar to the effect that Jitender @ Bunty had reached the police station and informed that suspecting the character of his wife Jyoti he had killed her and the dead body had been kept by him in house No.WZ-32/8A, Gali No.4, Sant Garh. That he was willing to face the consequence of his action.

2. Insp.Surender Dev PW-13, who was present at PS Tilak Nagar, when DD No.54A was recorded, proceeded to Chaukhandi Village, Tilak Nagar. He first went to House No.WZ-36B and therefrom to WZ-32/8A, Gali No.4, Sant Garh where dead body of Jyoti was found. Crime team was

summoned. Photographer was called. Photographs were taken. Site plan was prepared. The dead body was sent to the mortuary of DDU Hospital where Dr.Komal PW-11 conducted the post-mortem and opined that Jyoti had died due to asphyxia subsequent to throttling. Multiple nail marks on both sides of the neck were noted. Contusion on the neck was noted. Statements of Sushil Kumar PW-1 and Raj Kumari PW-2, the parents of Jyoti were recorded on the day when Jyoti's dead body was found i.e. February 18, 2008 itself. FIR Ex.PW-4/A was got registered for offences punishable under Section 498A/304B/34/302 IPC.

3. During further investigation statements of Pushpa PW-3, the parental aunt of Jyoti, Sheesh Pal PW-6, the brother-in-law of Jyoti's father Sushil Kumar, Savitri Devi PW-8, the landlady of House No.WZ-36B, Chaukhandi Village, Tilak Nagar were recorded.

4. At the trial Sushil Kumar PW-1, Raj Kumar PW-2, Pushpa PW-3 and Sheesh Pal PW-6 deposed that Jyoti had married appellant of her own will without knowledge of her parents. After the marriage Jyoti used to complain that appellant used to quarrel with her and used to demand dowry. That appellant and her mother used to criticise Jyoti for bringing less dowry. They used to demand television and fridge.

5. Sheesh Pal deposed that around midnight on February 18, 2008 the appellant had contacted him over the telephone and informed him that Jyoti was unwell with a request that he should immediately come to his house. Sushil Kumar PW-1 and Raj Kumari PW-2 stated that Sheesh Pal gave information to them that their daughter was unwell.

6. Their testimony on account of dowry harassment has rightly been disbelieved by the learned Trial Judge and succinctly stated the reason

would obviously be that Jyoti and the appellant had a love marriage. Jyoti's parents did not participate in the marriage. Where was then the question of there being any complaint from appellant's family that Jyoti's parents had given inadequate dowry at the marriage?

7. That takes us straight to the issue : whether the learned Trial Judge has rightly convicted the appellant for the offence punishable under Section 302 IPC.

8. The reasoning of the learned Trial Judge to convict the appellant for the offence of murder is that Jyoti concededly died in her matrimonial house and though the prosecution has not led evidence to prove that the appellant was present in the house, but from the fact that Jyoti died in her house in the middle of the night, the presumption would be that the appellant was in the house, and he having not rendered a satisfactory explanation as to how his wife suffered a homicidal death, the inference would be that the appellant killed his wife.

9. In taking the view, the learned Trial Judge has been influenced by a decision of this Court reported as 2012 (2) JCC 1563 Mukesh Vs. State, in which decision, after surveying various decisions of the Courts concerning homicidal death of a wife, in paragraph 52, it was observed as under:-

“52. Having examined the decisions of the Supreme Court on the point of death of a wife in her matrimonial house, we deem it appropriate to classify the said judicial decisions into undernoted 4 broad categories for the reason we are finding considerable confusion in the minds of the subordinate Judges as to the correct position of law:-

I In the first category fall the decisions where it is proved by the prosecution that the husband was present in the house

when the wife suffered a homicidal death and rendered no explanation as to how his wife suffered the homicidal death. (See the decisions reported as State of Rajasthan v Parthu (2007) 12 SCC 754, Amarsingh Munnasingh Suryavanshi v State of Maharashtra AIR 2008 SC 479, Ganeshlal v State of Maharashtra (1992) 3 SCC 106, Prabhudayal v State of Maharashtra (1993) 3 SCC 573, Dynaneshwar v State of Maharashtra (2007) 10 SCC 445, Trimukh Maroti Kirkan v State of Maharashtra (2006) 10 SCC 681, Bija v State of Haryana (2008) 11 SCC 242 and State of Tamil Nadu v Rajendran (1999) 8 SCC 679)

II In the second category are the decisions where the prosecution could not prove the presence of the husband in the house when the wife suffered a homicidal death but the circumstances were such that it could be reasonably inferred that the husband was in the house and the husband failed to render any satisfactory explanation as to how his wife suffered a homicidal death. The circumstances wherefrom it could be inferred that the husband was in the house would be proof that they lived in the house and used to cohabit there and the death took place in such hours of the night when a husband was expected to be in the house i.e. the hours between night time and early morning. (See the decisions reported as State of UP v Dr Ravindra Prakash Mittal (1992) 3 SCC 300 and Narendra v State of Karnataka (2009) 6 SCC 61).

III In the third category would be proof of a very strong motive for the husband to murder his wife and proof of there being a reasonable probability of the husband being in the house and having an opportunity to commit the murder. In the decision reported as Udaipal Singh v State of UP (1972) 4 SCC 142 the deceased wife died in her matrimonial home in a room where she and her husband used to reside together. The accused-husband had a very strong motive to murder the deceased which was evident from the letter written by him to his mistress, which letter clearly brought out the feeling of disgust

which the accused had towards the deceased. The accused had the opportunity to commit the murder of the deceased as there was evidence to show the presence of the accused in the village where the house in which the deceased died was situated at the time of the death of the deceased. Noting the facts that the accused had a strong enough motive and an opportunity to murder the deceased, noting that there was no evidence that the appellant was seen in his house by anybody, the Supreme Court convicted the accused.

IV In the fourth category are the decisions where the wife died in her matrimonial house but there was no evidence to show presence of the husband in the house at the time of the death of the wife and the time when the crime was committed was not of the kind contemplated by the decisions in category II and was of a kind when husbands are expected to be on their job and there was either no proof of motive or very weak motive being proved as in the decision reported as Khatri Hemraj Amulakh v State of Gujarat AIR 1972 SC 922 and State of Punjab Vs. Hari Kishan 1997 SCC Cri. 1211.”

10. The learned Trial Judge has held that instant case would fall in the second category of the decisions noted in paragraph 52 of the decision in Mukesh's case (supra).

11. The learned Trial Judge has ignored the contents of DD No.54A, and rightly so for the reason a confessional statement made to a police officer would not be admissible in evidence except to the extent it is covered by Section 27 of the Indian Evidence Act, and in the instant case no recovery was made pursuant to the disclosure statement. The evidentiary value of DD No.54A would only be that at 3:30 hrs. on February 18, 2008 the appellant was at P.S.Tilak Nagar.

12. Unfortunately, the learned Trial Judge has overlooked the testimony

of Savitri Devi PW-8, the testimony of Sheesh Pal PW-6 and that of Sushil Kumar PW-1 as also Raj Kumari PW-2 concerning the contemporaneous conduct of the appellant and the explanation rendered by the appellant when he was examined under Section 313 Cr.P.C.

13. Savitri Devi PW-8 has deposed that on the second floor of her house bearing No.WZ-36B, Chaukhandi Village, Tilak Nagar the appellant and Jyoti were residing with their daughter since February 13, 2008. On the day of the incident, at 11:00 PM the appellant knocked at the first floor door where she resided in the building informing her that Jyoti was unwell. He requested her to come with him. She went down and saw Jyoti lying on a mattress covered with a quilt. Jyoti was not responding. She thought that Jyoti was unconscious. She told appellant to take Jyoti to the hospital and returned to the first floor where she was living. The appellant had called his mother and brother who came, and all of them took Jyoti to the hospital. Later on she was told by the appellant that Jyoti was declared dead. Sheesh Pal PW-6 has deposed that around 12.00 mid-night he had received a telephonic call from the appellant requesting him to immediately come to his house because Jyoti was unwell which information he conveyed to the parents of Jyoti. Sushil Kumar and Raj Kumar, the parents of Jyoti have confirmed in their deposition that Sheesh Pal had informed them that appellant had informed him that Jyoti was unwell and he should come to his house.

14. The contemporaneous conduct of the appellant is not that of a guilty person. His conduct is in conformity with his explanation as to what happened. When he was examined under Section 313 Cr.P.C., to question No.12 : *‘Further that on 17.02.08 at about 11 PM, you knocked the door of*

the house of PW-8 Savitri and told her that Jyoti was unwell and asked her to accompany you and PW-8 Savitri went along with you to the rented room and saw Jyoti lying on a mattress (gadda) lying on the floor and she was covered with the help of one quilt. What do you have to say' the appellant gave the answer : 'It is wrong. I was not at my house at that time and was away to work. I returned from my work at 11 PM. I saw the household articles lying scattered and Jyoti lying and I immediately took my daughter in my lap and rushed to our landlady to inform her.

15. From the testimony of Savitri Devi it is apparent that the appellant had gone to her at 11:00 PM in the night informing her that Jyoti was unwell. She came down and thought that Jyoti was unconscious. She told appellant to take her to the hospital. Appellant had summoned his mother and brother in the meanwhile. Sumitra Devi saw the appellant take Jyoti to the hospital. He returned to inform her that Jyoti had died. Savitri Devi obviously did not see any strangulation marks on the neck of Jyoti, and suffice it to state that bruises and abrasions which are mild are prominently visible after some time of the person dying, but not immediately after the death takes place.

16. The prosecution has not examined any inhabitant of the second floor of House No.WZ-36B where appellant and Jyoti were residing to find out whether at that time they heard the couple quarrelling. Nobody has been examined to prove as to when the appellant returned home. No evidence has been led as to when the appellant returned to his room.

17. The appellant claims that he returned to the room at 11:00 PM and when he detected that Jyoti was not responding to him he went to the landlady, a fact corroborated by the landlady.

18. It is possible that somebody entered the house and strangled Jyoti. We take judicial notice of the fact that the house in question is in a area which is an unauthorized extension of the village abadi. Small plots of land ad-measuring between 25 sq.yds to 100 sq.yds are carved out, with narrow lanes. In each building between 10 to 15 rooms are constructed and in each room a family resides. Anybody can access these tenements because the main entrances are open to all the inhabitants to access their individual rooms and thus they are unsafe as compared to houses in authorized colonies where one family lives on the ground floor, another on the first floor and probably a third on the second floor; meaning thereby the inhabitants of the three families can secure themselves better.

19. Under the circumstances the appellant would be entitled to a benefit of doubt and the law noted by the learned Trial Judge would not be applicable on the subject of husband's guilt being inferred where the wife dies in the matrimonial house.

20. In the decision reported as AIR 1972 SC 922 Khatri Hemraj Amaulakh Vs. The State of Gujarat, where a husband, charged for the offence of murder of his wife could explain incriminating circumstances appearing at the trial against him, the Supreme Court held that on the basis of the said statement the husband would be entitled to an acquittal.

21. The facts of the said case were that Amaulakh's wife was found stabbed in the matrimonial house. As per the prosecution, after he had stabbed his wife, Amaulakh went to the police station to make a confessional statement. As disclosed to the police officers when the police reached the house they found Amaulakh wife stabbed. His hands and clothes were smeared with blood. A witness had deposed that he saw him

running away from the house with blood smeared on his hands and clothes. An hour prior to he being seen running away from his house with blood smeared on his hands and clothes, a witness had deposed of having seen him in a perplexed condition in his house.

22. The explanation given by Amaulakh was that when he came to his house at around 12 noon he found the door locked. He thought that his wife had gone to answer the call of nature but she did not return for quite a long time and thus he got perplexed. He went to the rear and saw the rear door open. He entered inside and saw his wife lying on the floor with blood oozing. To check whether she was breathing, he touched her, then his hand got stained with his wife's blood and his clothes also became blood stained. He realized that his wife was dead. He ran to the police station to inform said fact to the police. When he told the truth to the duty officer, he was slapped by the duty officer and was charged of concocting a false story to save himself from the murder of his wife.

23. The Supreme Court held that the version was plausible and thus notwithstanding incriminating evidence of he being seen perplexed outside his house an hour before he was seen running away from his house with blood smeared on his hands and clothes, and his wife being found murdered in the matrimonial house, Amaulakh was acquitted.

24. Instant case also warrants same principles of law to be applied, and in particular, keeping in view the testimony of the landlady, Sheesh Pal, Sushil Kumar and Raj Kumari, and the fact that the only evidence we have is that Jyoti died a homicidal death in her matrimonial house.

25. The appeal is allowed.

26. Impugned decision dated September 17, 2010 convicting appellant for

the offence of having murdered his wife is set aside. Order on sentence dated September 18, 2010 is quashed.

27. Appellant shall be set free forthwith.

28. Two copies of the present decision be sent to the Superintendent Central Jail Tihar : one for the jail record and the other to be supplied to the appellant.

29. TCR be returned.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

DECEMBER 03, 2014

mamta