

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

Judgment Reserved on: September 25, 2014

% *Judgment Delivered on: October 01, 2014*

+ **CRL.A.1165/2012**

ONKAR @ MODY

..... Appellant

Represented by: Mr.Sunil Dalal, Advocate with
Mr.Himanshu Agarwal,
Ms.Shranchika Kulshrestha,
Advocates.

versus

GOVT. OF NCT OF DELHI

..... Respondent

Represented by: Mr.Lovkesh Sawhney, APP
for the State with Inspector
Navin Chandra, ATO, PS
Sarojini Nagar.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Who says marriages are made in heaven, they are made by the parents and if sought to be made contrary to their wishes, the consequence are as met by Meenu the daughter of the appellant Onkar @ Mody, who is convicted for the murder of his own daughter.
2. Onkar @ Mody challenges the judgment dated May 25, 2011 convicting him for offence under Sections 302/201 IPC and the order on sentence dated May 28, 2011 directing him to undergo sentence for life for the offence punishable under Section 302 IPC and to pay a fine to ₹5,000/- and Rigorous Imprisonment for a period of seven years for the offence punishable under Section 201 IPC and to pay a fine of ₹5,000/- primarily on the ground that it is a case of suicide and not murder.

3. The prosecution case rests on the circumstantial evidence but such strong circumstantial evidence which leaves no room of doubt that the appellant and the appellant alone committed the murder of his daughter Meenu by smothering.

4. Meenu was in love with Sandeep who narrates the entire incident. Sandeep @ Netrapal, PW-1 deposed that he was working in the shop of mobile repair in front of Dr.Hedgewar Hospital and had known Meenu for the last three-four years while she was studying in the school at Anand Vihar. At that time he was in 7th standard. Ajay, his friend, who also studied in Meenu's class, had introduced him to Meenu. Meenu used to reside one street away from their street and they used to generally meet at Indraprastha Park, Sarai Kale Khan. She used to call him on his mobile No.9213907560 from the STD booth and whereafter he used to take her to the park. They also had physical relations and decided to marry each other. However, their parents did not agree as they belonged to the same village and the same community. As parents of Meenu came to know of their relationship, once or twice there was a quarrel between him and Meenu's father and after that she used to tell him that she was beaten by her father. On September 02, 2009 at about 9.00 PM he received a phone call from Meenu who told him that her parents had badly beaten her and asked him to marry her. He stated that it was late in the night and the next day they would marry in the Court. He called her near the dispensary of the village and made her understand. Thereafter he took Meenu to the house of his sister at Lawrence Road where he had physical relations with her. On the next morning he brought her to his shop with the intention to get married with her in the Court. They had their birth certificates and also got a bridal dress for

her. The owner of the shop where he was working was an advocate who assured to get them married. While they were about to leave for the Court Sandeep received a phone call from his father asking him to come home for ten-fifteen minutes. Similarly, father of Meenu, who was also present with his father, asked her to come home and they assured to get them married. They returned to his house at about 1.30 PM where father of Meenu was also present. He stated that they should send Meenu to his house for 30 minutes and they would arrange their marriage. However, Meenu was refusing to go to her home saying that she would be killed. In the meantime, the mother of Meenu also reached there with her other relatives, who started beating Meenu. Though he called the PCR but no police arrived. The mother of Meenu then took oath to send back Meenu after half an hour and promised their marriage. On their insistence and his father's insistence, he agreed to send Meenu with them to their house. Thereafter her father dragged Meenu to their house and mother of Meenu broke her bangles and Mangalsutra. On September 04, 2009 he came to know that Meenu had died. His father stopped him from going to Meenu's house. On September 03, 2009 while taking Meenu her father had stated that he would teach her a lesson and would get her nicely married. The only confrontation to his previous statement recorded under Section 161 Cr.P.C is that he did not state that the owner of the shop was an advocate who assured their marriage which is not material to the present case.

5. This version of Sandeep is corroborated by Inder Raj Singh, PW-2 who deposed that his son Sandeep @ Netrapal left the house on the night of September 02, 2009 without informing him. On September 03, 2009 his daughter Rekha, who was residing at Keshav Puram, told him on phone that

Sandeep and Meenu were present in her house and wanted to marry each other. Onkar @ Mody was sitting at his house since morning. On receiving the phone Onkar asked him to call both of them to home and that he would get them married. He asked his son to return back with Meenu and accordingly they returned back to his house at about 1.30 PM. Meenu was wearing a Sari and bangles etc. and she refused to return to her house. In the meantime the wife of Onkar and other family members arrived and started quarrelling. They took away Meenu assuring that they would not cause any harm to her. Later they came to know on September 04, 2009 that Meenu had died. It is thus apparent that till the afternoon of September 03, 2009 when Meenu was at the house of Inder Raj Singh and Sandeep @ Netrapal she was hale and hearty.

6. The version of Sandeep is further corroborated by Rekha, his sister, PW-4 who deposed about Sandeep and Meenu staying at her house on September 02, 2009 after reaching there at about 11.30 PM or 12 midnight. She stated that they wanted to marry each other and that she permitted them to stay overnight thinking that she would send them in the morning.

7. The police sprung into action on receipt of a call from Dr.Hedgewar Hospital at 2.00 PM on September 04, 2009 which was recorded vide DD No.13/A informing that Meenu daughter of Onkar aged 20 years has been admitted in the hospital by her father and has been declared brought dead. The MLC of Meenu Ex.PW-17/A noticed her being brought by Onkar, her father at 1.58 PM on September 04, 2009 in unconscious state and was declared brought dead.

8. SI K.K.Tiwari reached the hospital and recorded the statement Dinesh, the brother of the deceased who informed that Meenu had gone with

a boy Sandeep on September 02, 2009 and had come back on September 03, 2009 and thereafter she was very upset. On September 04, 2009 she took some poisonous substance at house due to which they had brought her at the given hospital. Thus the DD entry was kept pending and inquest was carried on. The body was sent for post-mortem which was conducted by Dr.S.Lal PW-9 on September 05, 2009 who vide the post-mortem report Ex.PW-9/A noticed the following external injuries:

- “i. Reddish abrasion 2.2 x 1 cm over left side face placed 2.5 cm outer to angle to mouth.*
- ii. Reddish abrasion 0.5 x 0.3 cm over left side face placed 0.5 cm below the injury No.1.*
- iii. Reddish abrasion 1.2 x 0.3 cm over left side chin placed 2 cm below the angle of mandible.*
- iv. Reddish abrasion 3.5 x 0.5 cm placed just below the lower lip in middle.*
- v. Reddish abrasion 0.6 x 0.2 cm (scratch) over left side front of chin placed 0.5 cm below the lower lip.*
- vi. Linear nail marks 0.3 x 0.1 cm over right side front of chin placed 5 cm below the lower lip and 1 cm right to middle eye.*
- vii. Reddish nail mark 0.2 x 0.1 cm over left side tip of chin placed 1.8 cm left to midline and placed 3.5 cm below the lower lip.*
- viii. Multiple scratch abrasion linear small varies in size from 1.2 x 1 cm to 0.2 x 0.1 cm over dorsum of left hand in area of 12 x 10 cm.*
- ix. Linear scratch abrasion 0.5 x 0.2 cm over dorsum of*

lower one-third of left forearm placed 8.5 cm above the wrist joint.

x. Scratch reddish abrasion 2 x 0.2 cm over dorsum of lower one-third of left forearm placed 6 cm above the wrist joint.

xi. Scratch reddish abrasion 1 x 0.2 cm over dorsum of middle border of right lower one-third of forearm placed 6 cm above the wrist joint.”

9. Dr.S.Lal opined the cause of death was asphyxia due to ante mortem smothering. All the injuries were ante mortem in nature, fresh in duration and could be caused during scuffle. He opined that the time since death was about 24 hours. However, viscera was preserved to rule out any intoxication.

10. As per the FSL report the viscera was found to contain phenothiazine group of drugs. This FSL report was not exhibited however Dr.S.Lal was confronted with this report. Dr.S.Lal on seeing the post-mortem report and the FSL report in the Court opined that the deceased was intoxicated at the time of death however, the cause of death was asphyxia due to ante mortem smothering. Even in the cross-examination on the basis of external injuries and internal findings he maintained his opinion that the cause of death was smothering which resulted in asphyxia. He denied the suggestion that the death was due to consuming phenothiazine group of drug and not due to smothering.

11. No defence evidence has been led by Onkar and in his explanation under Section 313 Cr.P.C he has only stated that he has been falsely implicated and that no altercation took place at the house of Sandeep nor that

he promised that he would arrange marriage of Meenu with Sandeep nor he or his wife gave beatings to Meenu nor they promised to send Meenu to the house of Sandeep. He had not even threatened Meenu on September 03, 2009 while taking her back. According to him Sandeep performed sexual intercourse with Meenu on false assurance of marrying her but later backed out as a result of which Meenu got frustrated and committed suicide. He further stated that Sandeep was a habitual flirt and had ruined lives of many girls by luring them on the pretext of marrying them and after 16 days of the incident, police concocted a false story in consultation with Sandeep and his family.

12. Thus the only defence is that out of frustration Meenu committed suicide. The endeavour of learned counsel for the defence while arguing the appeal was also only to this extent. In this regard he has placed literature from Modi's Jurisprudence and stated that the learned Trial Judge has noted incomplete facts from Modi's Jurisprudence and the deceased died due to poisoning. According to him the finding of the post-mortem doctor that Meenu died due to asphyxia is wrong because as per Modi's jurisprudence in a case of asphyxia the face may be pale or suffused, eyes are open, the eyeballs are prominent, the conjunctivae are congested, sometimes there are petechial haemorrhages, the lips are livid, the tongue is sometimes protruded, bloody froth comes out of the mouth and nostrils, the skin shows punctiform ecchymoses with lividity of the limbs. According to him none of these symptoms were found in the MLC, post-mortem report or the death report. According to him the cause of suffocation could also be the result of choking or obstruction of the air passage from within.

13. A perusal of the post-mortem report would show that the deceased

had abrasion marks on the outer angle of mouth, mandible region, lower lip, chin, left hand, left forearm and right lower 1/3rd of forearm. The injuries on the arms clearly show that the deceased was pinned down and thereafter smothered which is born out from the injuries from the face of the deceased. Dr.S.Lal has noted above has been cross-examined on this aspect and he has clarified that the injuries could be caused during scuffle and the reason for asphyxia was smothering and not consumption of drug like phenothiazine. He denied the suggestion that the death was due to consuming phenothiazine group of drug and not due to smothering.

14. The conduct of Meenu not being to the liking of Onkar @ Mody, the fate that ensued for Meenu, a homicidal death is evident from the post-mortem report. In view of the evidence on record we upheld the conviction and order on sentence passed by the learned Trial Court. Appeal is dismissed. The appellant will suffer the remaining sentence.

15. T.C.R. be returned.

16. Two copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other to be handed over to the appellant.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

OCTOBER 01, 2014
‘vn’