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§-R-33

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRIMINAL APPEAL No. 807/2012

% Judgment reserved on 22nd February, 2016
Judgment pronounced on 17 May, 2016

DEVINDER PAL SINGH

..... Appellant

Through : Mr. Braham Singh, Mr. N. S. Vidhai and
Ms. Manju, Advocates.

versus

STATE

..... Respondents

Through : Ms. Aashaa Tiwari, APP for the State.

CORAM:

HON'BLE MR. JUSTICE G. S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. This appeal is directed against the judgment dated 18.05.2012 and order on sentence dated 28.05.2012 passed in Sessions Case No. 20/2010 whereby the Additional Sessions Judge-02, South East, Saket Courts, New Delhi has convicted Devinder Pal Singh for the offence under Sections 302 of the Indian Penal Code. The Trial Court has sentenced Devinder Pal Singh for life imprisonment with fine in the sum of Rs.10,000/-, and in default of payment of fine, to further undergo simple imprisonment for one year for the offence under Section 302 of the Indian Penal Code.

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2. In order to appreciate the rival contentions advanced by the parties and issues involved, it is necessary to set out the brief facts of the case which gave rise to the present criminal appeal. On 06.09.2009, a DD No. 38-A was recorded on an information received through wireless that a lady had died after falling from the roof. She was a victim of rape. The case of the prosecution further is that Investigating Officer SI Joginder Singh reached at the spot and met Pappu (brother of the deceased) and his wife Sridevi (sister-in-law of the deceased) there. Since, deceased died within seven years of her marriage, Executive Magistrate/SDM, Kalkaji was informed. Statements of Pappu and Sridevi were recorded wherein they held the accused persons responsible for the death of the deceased for non fulfillment of the demand of dowry.
3. After the investigation that followed the complaint, police filed a charge sheet under Section 498A/304B/302/34 of the Indian Penal Code. Both the accused persons were charged for the offences under Section 498A read with Section 34 of the Indian Penal Code and under Section 304B read with Section 34 of the Indian Penal Code. Accused Devinder Pal was also charged for the offence under Section 302 of the Indian Penal Code. The accused pleaded not guilty and claimed trial to the charges framed against them.
4. The prosecution examined as many as 20 witnesses to bring home the guilt of the accused persons. The statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure wherein they denied the accusations levelled against them. Four

witnesses were examined in their defence including both the accused persons.

5. On an appraisal of the evidence adduced by the parties and after hearing them, the learned Trial Court eventually came to the conclusion that the prosecution has not been able to prove its case beyond all reasonable doubts against the accused persons for the offences under Section 498A/304B/34 of the Indian Penal Code and accordingly acquitted both the accused persons for the said offences but accused Devinder Pal was found guilty for the offence punishable under Section 302 of the Indian Penal Code and recorded his conviction and sentenced him for the period as mentioned above.
6. Aggrieved by the impugned judgment and order on sentence, the accused No.1/Appellant preferred the present appeal for redress.
7. The main thrust of the argument advanced by Mr. Braham Singh, learned counsel for the appellant was that the trial court had committed a grave error in holding the appellant guilty for the offence under Section 302 of the Indian Penal Code. He submitted that the impugned judgment was erroneous and not sustainable and has resulted in miscarriage of justice and the same is liable to be set aside. Mr. Singh further contended that the deceased Poonam has committed suicide by jumping from the roof as she was depressed on account of rape committed on her by one Chabbi Ram on 04.09.2009 and also because of severe beatings given by her brother (PW4).
8. Learned counsel further placed reliance on DD No. 38A wherein it was recorded that a message was received in the Police Control Room that a lady who had been raped on 04.09.2009 had committed suicide

by jumping from the roof which goes on to prove that it was a suicidal death.

9. Ld. Counsel for the appellant further contended that the FIR was registered after unexplained inordinate delay of 3-4 days which creates a shadow of doubt about the date and time taken by the investigating agency to implicate the appellant in the present case. Learned counsel reliance upon *Lalia Kumari Vs. Government of Uttar Pradesh and Ors.* reported in (2014) 2 Supreme Court Cases 1, wherein the Hon'ble Apex Court held that :

"93) The object sought to be achieved by registering the earliest information as FIR is inter alia two folds: one, that the criminal process is set into motion and is well documented from the very start; and second, that the earliest information received in relation to the commission of a cognizable offence is recorded so that there cannot be any embellishment etc., later.

94) Principles of democracy and liberty demand a regular and efficient check on police powers. One way of keeping check on authorities with such powers is by documenting every action of theirs. Accordingly, under the Code, actions of the police etc., are provided to be written and documented. For example, in case of arrest under Section 41(1)(b) of the Code, arrest memo along with the grounds has to be in writing mandatorily; under Section 55 of the Code, if an officer is deputed to make an arrest, then the superior officer has to write down and record the offence etc., for which the person is to be arrested; under Section 91 of the Code, a written order has to be passed by the concerned officer to seek documents; under Section 160 of the Code, a written notice has to be issued to the witness so that he can be called for recording of his/her statement, seizure memo/panchnama has to be drawn for every article seized etc.

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95) The police is required to maintain several records including Case Diary as provided under Section 172 of the Code, General Diary as provided under Section 44 of the Police Act etc., which helps in documenting every information collected, spot visited and all the actions of the police officers so that their activities can be documented. Moreover, every information received relating to commission of a non-cognizable offence also has to be registered under Section 155 of the Code.

96) The underpinnings of compulsory registration of FIR is not only to ensure transparency in the criminal justice delivery system but also to ensure 'judicial oversight'. Section 157(1) deploys the word 'forthwith'. Thus, any information received under Section 154(1) or otherwise has to be duly informed in the form of a report to the Magistrate. Thus, the commission of a cognizable offence is not only brought to the knowledge of the investigating agency but also to the subordinate judiciary.

98) In **Thulia Kali vs. State of Tamil Nadu : (1972) 3 SCC 393**, this Court held as under:-

"12...First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused.

The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not

only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained..."

10. Further reliance has been placed on ***Ramji Surjya Padvi and Anr. Vs. State of Maharashtra*** reported in (1983) 3 Supreme Court Cases 629, wherein the Hon'ble Apex Court held that :

"There is no doubt that even where there is only a sole eye witness of a crime, a conviction may be recorded against the accused concerned provided the Court which hears such witness regards him as honest and truthful. But prudence requires that some corroboration should be sought from the other prosecution evidence in support of the testimony of a solitary witness particularly where such witness also happens to be closely related to the deceased and the accused are those against whom some motive or illwill is suggested. Now in the instant case a careful analysis of the evidence relating to the inordinate delay involved in the giving of the first information to the police and the other inherent inconsistencies in the evidence of the sole eye witness i. e. Surjabai (P. W.2) shows that her evidence cannot be considered as sufficient to find the accused guilty. The first information (Exh. P. 10) itself appears to be one prepared after some deliberation. The role attributed to Gumba (P.W.5) the former Police Patil in the prosecution evidence compels the Court to look for corroboration from the other prosecution evidence before accepting the evidence of Surjabai (P.W. 2)."

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11. Learned counsel further placed reliance on ***Crl. A. No. 105/81 titled as Vijender Singh Vs. The State*** passed by the Division Bench of this Court.
12. Mr. Singh, learned counsel for the appellant contended that neither the exhibits i.e. blood stained earth, finger print and blood samples were collected from the alleged place of occurrence nor the crime team was informed and the place of occurrence was photographed by PW1, a private photographer at the instance of the Investigating Officer.
13. Learned counsel for the appellant contended that no site plan was prepared by the Investigation Officer. Learned counsel further contended that despite invocation of charges under Section 498-A and 304-B neither the father and mother of the deceased were examined nor any inhabitants of the building was examined.
14. To substantiate his arguments, learned counsel has placed reliance on ***Crl. Revision No. 265/1981 titled as Ratha Jana Vs. The State of Orissa*** passed by the Single Judge of Orissa High Court.
15. Learned counsel further contended that there are material inconsistencies, contradictions, exaggerations and improvement in the statements of the witnesses at every stage which creates the dark shadow of doubt about their truthfulness and correctness.
16. Per contra, Ms. Aashaa Tiwari, learned Additional Public Prosecutor for the State strenuously defended the impugned judgment and the order of conviction and rebutted the arguments advanced by the learned counsel for the appellant. Learned counsel contended that except other evidence adduced by the prosecution on record, the

medical evidence adduced by the prosecution through PW5 Dr. Adarsh Kumar and PW6 Dr. Arvind Kumar was sufficient to connect the respondent with the alleged crime.

17. Learned counsel for the state further contended that motive for eliminating the deceased stands established and presumption under Section 113A is invoked against the appellant.
18. We have heard learned counsel for the parties and perused the entire material available on record.
19. At the outset, it is pertinent to mention herein that the both accused persons have been acquitted for the charges under Section 498-A/304-B of the Indian Penal Code. The appellant had been convicted and sentenced for the offence punishable under Section 302 of the Indian Penal Code.

Delay in registering the First Information Report

20. The first contention raised by learned counsel for the appellant is that the prosecution has failed to tender any plausible explanation for the delay in registering the FIR in the instant case.
21. The alleged incident in the present case occurred at about 11:00 pm on 06.09.2009 pm, the information of the occurrence was received in the police station and the same was recorded as DD No. 38-A. At 11:15 pm, PW17 SI Joginder Singh along with PW3 HC Bhim Singh reached at the spot where they were informed that the injured had already been removed to the hospital where she was declared "brought dead". The FIR was got registered on 08.09.2009 at 7:00 pm by the Investigating Officer PW17 SI Joginder Singh on the statement of PW4 and subsequent discussion with the senior officers and number of

other investigation processes like post-mortem, site plan, post-mortem of the deceased etc. and copy of the FIR was sent to the concerned 'Ilaqa Magistrate' on the next day i.e. on 09.09.2009.

22. It is relevant to go through the law laid by Apex court in this regard. In ***Jitender Kumar Vs. State of Haryana*** reported in (2012) 6 SCC 204, the Hon'ble Apex Court held that :

"It is a settled principle of criminal jurisprudence that mere delay in lodging the FIR may not prove fatal in all cases, but in the given circumstances of a case, delay in lodging the FIR can be one of the factors which corrode the credibility of the prosecution version. Delay in lodging the FIR cannot be a ground by itself for throwing away the entire prosecution case. The Court has to seek an explanation for delay and check the truthfulness of the version put forward. If the Court is satisfied, then the case of the prosecution cannot fail on this ground alone."

23. In ***Kanhaiya Lal & Ors. Vs. State of Rajasthan*** reported in (2013) 5 SCC 655, it has been observed that :

*12. It is settled in law that mere delay in lodging the First Information Report cannot be regarded by itself as fatal to the case of the prosecution. However, it is obligatory on the part of the court to take notice of the delay and examine, in the backdrop of the case, whether any acceptable explanation has been offered, by the prosecution and if such an explanation has been offered whether the same deserves acceptance being found to be satisfactory. In this regard, we may refer with profita passage from ***State of H.P. v. Gian Chand*** : (2001) 6 SCC 71, wherein a three-Judge Bench of this Court has expressed thus:*

Delay in lodging the FIR cannot be used as a ritualistic formula for doubting — the prosecution case and discarding the same solely on the ground of delay in

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lodging the first information report. Delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case.

13. In Ramdas and Ors. v. State of Maharashtra : (2007) 2 SCC 170, this Court has observed that mere delay in lodging the first information report is not necessarily fatal to the case of the prosecution. However, the fact that the report was lodged belatedly is a relevant fact of which the court must take notice. This fact has to be considered in the light of other facts and circumstances of the case, and, in a given case, the court may be satisfied that the delay in lodging the report has been sufficiently explained. In the light of the totality of the evidence, the court has to consider whether the delay in lodging the report adversely affects the case of the prosecution. That is a matter of appreciation of evidence."

24. In view of the settled position of law and in the facts of the present case, the argument raised by learned counsel for the appellant that there was inordinate and unexplained delay in registering the FIR is without any substance. Even if we presume that there is delay in registering the FIR, it is not of such a nature that would entail any benefit to the accused. Thus in our view, there is no inordinate or unexplained delay in lodging the FIR. Moreover, it is worth

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mentioning that the plea of delay in registration of FIR has been raised by the counsel for the appellant for the first time before this court.

Defective Investigation

25. Learned counsel for the appellant raised serious allegations against the manner in which the investigation was carried out. Learned counsel laid emphasis on the fact that the investigation was defective and shoddy as the exhibits i.e. blood stains earth, finger print and blood samples were not collected from the spot, crime team was not informed, no site plan was prepared, despite invocation of dowry death charges, neither the parents of the deceased nor any inhabitants of the building were examined.
26. Though, there are some defects in the investigation carried out by the investigating agency, but it is well settled by a catena of judgements that the defect in the investigation can not in itself be a ground for acquittal. In the case of *C. Muniappan v. State of T.N.*, (2010) 9 SCC 567, it has been held by the Hon'ble Supreme Court that:

"55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the

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prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation.

27. Similar view was taken by the Apex Court in the case of **Sunil Kundu v. State of Jharkhand**, (2013) 4 SCC 422, wherein it was held that:

"29...It is true that acquitting the accused merely on the ground of lapses or irregularities in the investigation of a case would amount to putting premium on the depreciable conduct of an incompetent investigating agency at the cost of the victims which may lead to encouraging perpetrators of crimes. This Court has laid down that the lapses or irregularities in the investigation could be ignored subject to a rider. They can be ignored only if despite their existence, the evidence on record bears out the case of the prosecution and the evidence is of sterling quality. If the lapses or irregularities do not go to the root of the matter, if they do not dislodge the substratum of the prosecution case, they can be ignored..."

28. In another case of **Hema v. State**, (2013) 10 SCC 192, it was observed by the Apex Court that:

"18. It is clear that merely because of some defect in the investigation, lapse on the part of the investigating officer, it cannot be a ground for acquittal. Further, even if there had been negligence on the part of the investigating agency or omissions, etc. it is the obligation on the part of the court to scrutinise the prosecution evidence dehors such lapses to find out

whether the said evidence is reliable or not and whether such lapses affect the object of finding out the truth."

Whether the death was suicidal or homicidal?

29. In the instant case, the Investigating Officer moved an application before the Department of Forensic Medicine, JPNATC, AIIMS seeking opinion in respect of cause of death of deceased Poonam Pal. Both PW5 and PW6 visited the crime scene and were asked i) whether the injuries present on the body of the deceased have been caused due to fall from height or these injuries have been caused due to fall through forceful push caused deliberately? and ii) A specific opinion in this case may be given to conclude whether the injuries caused to the deceased due to fall from height were suicidal or homicidal in context of physical visit at the spot, photographs taken on the date of incident of the spot shown to you and injuries observed during autopsy of the deceased in addition to the statement recorded during the inquest proceedings? Both these witnesses while answering the aforesaid questions stated that :

"There are signs of struggle in form of broken pieces of glass bangles recovered from top of building during the scene visit (jar No. 1) i.e. at the alleged site of incidence. The height of the victim was 5' (150 Cms.) whereas the height of parapet was 93 cms. & it is unlikely for a person to fall while peeping from the top. Both these findings are indicative of active movement & therefore the possibility of deliberate pushing by someone exists in this case. Injury No. 6 & 7 being present unilaterally and predominantly on left side of body are indicative of simultaneous infliction which could have occurred when body struck the street road (2nd impact)

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30. From the medical evidence along with other attendant circumstances discussed hereinabove, we have no hesitation in holding that the death of Poonam Pal is homicidal in nature. It cannot under any circumstances be assumed to be a natural death.
31. The sole question, however, which remains for consideration is, as to whether the appellant can be held guilty for committing the murder of his wife.
32. The case of the prosecution rests upon the testimonies of PW4 Pappu, brother of the deceased and PW8 Sridevi, sister-in law of the deceased. Pappu, brother of the deceased in his complaint Ex.PW4/A stated that on 02.09.2009, he went to drop his sister (since deceased) to her matrimonial house and returned on 03.09.2009. On 04.09.2009, the appellant called him to his house on which he along with his wife (PW8) went there and found swelling on the whole body of the deceased. On inquiry, appellant disclosed that the deceased had been raped by a boy, therefore, he (accused) had beaten her. He further stated that at about 8:00 p.m. he was in the house of accused No. 2, accused No. 1 and his sister Hardevi gave beatings to his sister on which he requested them to live peacefully. The complainant further stated that accused No.2 caught hold of his wrist and accused No. 1 took the deceased to the roof and threw her from the roof and came downstairs and stated that the deceased had jumped from the roof.
33. The complainant stepped into the witness box as PW4 and on oath deposed that :

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"On the day of incident, I had come to my sister's matrimonial home with my wife Sridevi. The accused Ram Parvesh took me aside by holding my hand and the wife of Ram Parvesh took my wife to a side and accused Devinder Pal took my sister Poonam Pal to the roof. After sometime he came down and told my wife that Poonam has fallen from the roof. Thereafter, the accused persons had attempted to take my sister somewhere in a TSR. The accused Devinder Pal with his sister was taking my sister Poonam Pal in the TSR when my wife also boarded the TSR after chasing the same. The sister of accused Devinder Pal asked Devinder pal to strangulate Poonam Pal if she was still alive. On the say some police official met. They asked TSR to stop. My sister Poonam Pal was taken to Trauma Center and in the hospital my sister was declared dead. My statement was recorded by the police in the Trauma Center."

34. Smt. Sridevi, sister-in-law of the deceased examined as PW8 and deposed that :

"On 6th September, I alongwith my husband went to Madanpur Khadar and reached there at about 4:00 p.m.. My sister-in-law deceased Poonam Pal was beaten in my presence by accused Devinder Pal and Ms. Hardevi, sister-in-law of deceased Poonam Pal, with danda and belt. The accused Devinder Pal Singh, accused Ram Parvesh and the sister of the accused Devinder Pal namely Hardevi said to us that the deceased was not having a good character and was having some affair with a boy. I told them that the deceased was having a good character. We also asked them to stay in cordiality and since it is 8:00 pm, we were about to go back. We were stopped by the accused persons. Accused Ram Parvesh caught hold my husband with the wrist and accused Devinder Pal Singh with his sister Hardevi took the

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deceased Poonam Pal on the roof through the staircase by pulling her with hands. After some time, the accused Devinder Pal with his sister Hardevi came downstairs. In the meantime, a boy came from the gali and informed that some lady has fallen from the roof top of the fourth floor. I went to the gali where the deceased Poonam Pal was lying.

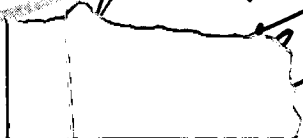
The accused Devinder Pal brought an auto driven by him. He put deceased Poonam Lal into the auto and was taking her away. People had gathered at the spot. When the accused was taking the deceased in an auto driven by him, I forcibly boarded the auto. He was taking the auto to the cremation ground. On the way, 3/4 persons known to the accused Devinder Pal met. The accused Devinder and his sister said that they will throw the dead body in the gutter. I asked them repeatedly to take deceased Poonam Pal to the hospital. In the meantime, the landlord had made a call to the police. Thereafter, the dead body of Poonam Pal was taken to the hospital."

35. Admittedly, the deceased was a victim of rape and an FIR was registered against one Chabbi Ram. There is sufficient material available on record which goes to show that the appellant had motive to eliminate the deceased as he was unhappy with the incident of rape committed upon the deceased two days prior to the present incident and had given beatings to the deceased which fact find support from the testimony of PW19 Dr. Shipli Rathore who proved the MLC report Ex.PW19/A of the deceased in case FIR No. 260/09 wherein the deceased disclosed that she had been beaten by Chabbi Ram and by her husband. Further, both PW4 and PW8 remained consistent in their

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statement that when they visited the house of the deceased on the day of occurrence, accused Devinder Pal Singh gave beating to the deceased and forcibly took her to the roof. Within seconds/minute, the deceased was found dead due to fall from the roof of the house. PW8 categorically stated in her deposition before the court that "When the accused was taking the deceased in an auto driven by him, I forcibly boarded the auto. He was taking the auto to the cremation ground." PW8 was not cross examined by the defence on this aspect which clearly points towards the guilt of the appellant. The conduct of the appellant was not natural as the appellant was taking the deceased to the cremation ground instead of taking her to the hospital for immediate medical attention.

36. In view of the above discussion, we are convinced that the guilt of the appellant has been proved beyond all reasonable doubts. Therefore, there is no ground to interfere in the judgment of conviction and order of sentence. Consequently, we do not find any force in the appeal. Accordingly, same is dismissed.
37. Trial Court Record be returned.


SANGITA DHINGRA SEHGAL, J.


G. S. SISTANI, J.

May 17th, 2016 / gr