

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

CRL.A. 886/2018

Reserved on : 17.01.2019

Date of Decision: 15.02.2019

IN THE MATTER OF:

LAXMAN GUPTA

..... Appellant

Through : Ms.Rakhi Dubey, Advocate.

versus

STATE

..... Respondent

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

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J.

1. The present appeal arises out of the judgment on the conviction dated 07.04.2018 and order on sentence dated 27.04.2018 in Sessions Case No. 45056/2015 arising out of FIR No.288/2015, under Sections 302/498A IPC, P.S. Khajuri Khas.

2. The appellant has been convicted under Section 302 and has been sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.5000/- in default of which he has been directed to undergo R.I. for one year.

3. So far as Section 498A IPC is concerned, the appellant was acquitted. Besides Section 302 IPC, an alternate charge under Section 304B IPC was also framed against the appellant, however, in view of the appellant being held guilty under Section 302 IPC, the offence under Section 304 B IPC was held to be not made out.

4. The offence saw the light of the day on 18.03.2015 when the appellant, on his own, went to P.S. Khajuri Khas and confessed to having killed his wife Suman Devi, on 16.03.2015. While making the said confession, the appellant also stated that for the last 1 ½ months he had been residing with his wife in a rented room and on 16.03.2015, a Monday morning, there was a quarrel between him and his wife; at about 11:30 am, he threw her wife on the bed and killed her by strangulation. The appellant also stated that he had written about this act with a pencil on the wall of the tenanted room. Thereafter, he had locked the room from outside and roamed around for 2-3 days. After he realized his mistake, he had come to the police station. He stated that he had the keys of the room and could get the body of his wife recovered from there. This information recorded on 18.03.2015 as DD 10-A (Ex.PW-7/A), was signed by the appellant.

5. SI Kuldeep Singh (PW-23), Ct. Thane Ram Meena (PW-14) along with Inspector Yogendra Khukhar (PW-24) reached the spot, the Crime Team was also called. The appellant opened the room with the key which he was carrying. The dead body of his wife Suman Devi was found lying on a mattress on the floor. The police team also noticed a message written on the wall of the room which reads as under :-

“Commissioner Sahab is aurat ne aur iske pariwar walo ne mera jeena haram kar rakha hai yeh aurat aur iska pariwar mere se kehte hai ki ya to tum hume 80 lakh rupay do nahi to hum tum par dahej ka aarop laga denge sir ji iske liye maine apne pariwar se alag raha fir bhi isne meri har jagah meri bejjati ki isko maine sub kuch diya jab bhi mujh se ladai karti thi jab bhi mujh se kehti thi ki tu mere gaon chal tuje to kalmia aam ki tarah katwa dungi”.

6. The spot was photographed as well as videographed and the FIR was registered. During the inquest proceedings, statement of Arvind Kumar, brother of the deceased (PW-10) was recorded by the SDM. He

stated that the appellant's brother, namely Pawan Kumar Lal had threatened and demanded dowry of Rs.7-8 lakhs from him to repay the loan amount which the appellant had borrowed for running a shop. He also stated that 2-3 months prior to the death of his sister, the appellant had visited his house along with his wife and demanded Rs. 5,00,000/- from the father of the deceased to repay the borrowed amount. The witness also stated that his father had asked the appellant to stay with his wife at her parental home. However, the said offer was refused by the appellant and later, his father was informed by Suman Devi that she was beaten by the appellant for not bringing cash of Rs. 5,00,000/- demanded by him. On the above statement, Section 304B/498A/34 IPC were also added in the FIR. During the investigation, the handwriting sample of the appellant was taken and sent to the FSL.

7. After the investigation, the charge sheet was filed and charges were framed against the appellant on 24.08.2015 under Section 302/304B/498A IPC. A total of 25 witnesses were examined including the material witnesses, namely, Arvind Kumar, brother of the deceased as PW-10; Narender Kumar, uncle of the deceased as PW-17; Chander Pal, tenant in the same house, as PW-2; Pawan Kumar, tenant as PW-3; Ramkesh, tenant, as PW-4; Ramjeet, tenant, as PW-6; Rakesh Sharma, SDM appeared as PW-5 to prove the inquest proceedings (PW-5/A). The post-mortem report (PW-16/A) was proved by Dr. V. J. Singh, PW-16. The other witnesses were essentially witnesses relating to arrest, seizure and other investigations. No witness was examined by the appellant in his defence.

FSL Reports:

8. The writing on the wall allegedly written by the appellant was compared with the sample handwriting of the appellant and as per the FSL report, PW-19/A, it was opined by Ajit Singh (PW-19) that the same was written by the appellant.

The DNA Analysis Report (PW-22/A) was proved by Sunita Gupta. As per the said report, the blood on the clothes of the deceased was found matching with the blood on the pillow.

Postmortem Report

9. The postmortem report (Ex.PW-16/A) was proved by Dr.V.J. Singh, and the cause of death was mentioned as “*Asphyxia as a result of ante mortem manual strangulation*”. The post mortem was conducted on 22.03.2015 and the time since death was opined to be about one week prior to her death. The following injuries were noted on the body of the deceased:

1. *‘Reddish abrasion of size 0.5 x 0.5 cm present over left side neck, 1.5 cm from midline and 6 cm below chin;*
2. *Reddish abrasion of size 0.5 x 1.5 cm present over left side neck, 1.5 cm lateral to injury No.1;*
3. *Reddish abrasion of size 0.5 cm x 1.4 cm present over left side neck, 0.2 cm lateral to injury No.2;*
4. *Curvilinear reddish abrasion of size 1.2 x 0.1 cm present over left side neck, 6 cm from midline, 3 cm below angle of mandible and 1 cm lateral to injury No.3;*
5. *Curvilinear reddish abrasion of size 0.8 cm x 0.1 cm present over left side neck, 6.5 cm from midline and 2 cm below angle of mandible;*

6. *Curvilinear reddish abrasion of size 1.0 x 0.3 cm present over right side neck, 6 cm from midline and 3 cm below angle of mandible.'*

10. Arguments were heard from both the sides. Ms. Rakhi Dubey, learned counsel for the appellant argued that the ingredients of Section 302 IPC are not fulfilled. She urged that the necessary ingredient of intention is lacking, and even, on a demurer, if the prosecution case is accepted, the allegations make out a case of Section 304 Part II IPC. On the other hand, Ms. Aashaa Tiwari, the learned APP has supported the impugned judgment.

MATERIAL WITNESSES:

11. Arvind Kumar (PW-10) has deposed that his sister was married to the appellant on 08.06.2011; she was living happily at her in-laws' house; after two years of the marriage, the appellant's elder brother, Pawan had demanded Rs.7-8 lakhs from him for repayment of a loan which had been taken by the appellant from Pawan. The said witness further deposed that 2-3 months prior to the death of his sister, the appellant had visited his house and demanded Rs.5,00,000/- from his father to repay the borrowed amount. His father had showed inability to pay the said amount. The appellant also refused the offer to live with his in-laws. The appellant used to beat Suman for not bringing the demanded amount of Rs.5,00,000/-. As per this witness, even two months prior to her death, Suman had informed him and his parents that the appellant and his brother (Pawan) had beaten her for not bringing the dowry amount. The said matter was compromised between his sister and the appellant. PW-10 proved his statement (Ex.PW-5/A) made before the SDM. During the cross-examination, he denied the suggestion that no money had been demanded by the appellant. He

reiterated that a compromise was arrived at between the appellant and his sister. He further admitted that he had seen his sister quarreling with the appellant but stated that he did not know the reason for the same. He denied the suggestion that her sister was mentally retarded or that she had consumed some medicines prior to her death.

12. Narender Kumar, uncle of the deceased was examined as PW-17. He deposed that the appellant had demanded dowry from them and used to harass and assault Suman Devi. In the cross examination, he denied the suggestion that Suman Devi was mentally retarded. He denied having any knowledge regarding the treatment of Suman Devi at IHBAS for any kind of ailment.

13. Bhagat Singh, landlord of the appellant was examined as PW-1. He deposed that he had let out one room on the first floor of his house to the appellant, 20-25 days prior to 18.03.2015. He stated that the appellant was living with his wife, Suman Devi and that they both used to quarrel frequently for which reason, he had asked them to vacate the room. He further deposed that on 16.03.2015, at about 11-12 noon, he was present in his shop on the ground floor, when he saw the appellant coming down stairs, the witness asked him if he had arranged another room on which the appellant had replied that he would vacate the tenanted room on the same day. PW-1 further deposed that on 18.03.2015, the appellant came with the police at the rented room and after taking out the key from his trouser, he had opened the lock of the said room. The dead body of the appellant's wife, Suman Devi was found on the bed sheet spread on the floor of the room. He had also noticed scratch mark on her neck. The witness also saw a message written on the wall of the room with a pencil addressed to the Commissioner to the effect that the appellant's wife and her family

members had made the appellant's life miserable and they were asking him to give them Rs. 80,00,000/- failing which they would implicate him in a dowry case and the appellant should go with her to her village where she would get him killed like a mango sapling. The said witness also proved the 16 photographs which were taken of the spot and of the message written on the wall. During the cross-examination, the witness had stated that he personally heard the voices of the appellant and his wife during the quarrels. He stated that the wife of the appellant used to speak and he never heard the appellant responding to his wife and on enquiring from the appellant about the reason for the frequent quarrels, appellant had replied that his wife was sick.

14. Chander Pal (PW-2), Pawan Kumar (PW-3), Ramkesh (PW-4), Ramjeet (PW-6), tenants in the same house were also examined. PW-2 stated that the appellant and his wife used to quarrel frequently. During the cross-examination, he stated that the appellant's wife might have been suffering from some mental problem and she used to quarrel with everyone. He stated that during the quarrel, mostly the appellant's wife used to speak. PW-2 also stated that room of the appellant was locked from 16.03.2015 to 18.03.2015 and the same was opened by the appellant after taking out the key from his pocket in the presence of the police officer. To a similar effect are the testimonies of PW-3, PW-4 and PW-6.

15. From the evidence on record, the following circumstances stand proved :-

- i) the appellant and the deceased were living together in a rented room.
- ii) the appellant was seen going out after locking the room on 16.03.2015 at about 11:00 AM – 12 :00 Noon.

- iii) the room remained locked from 16.03.2015 to 18.03.2015.
- iv) the appellant made a disclosure before the police on 18.03.2015.
- v) the room was opened by the appellant on 18.03.2015 by taking out keys from his pocket, in presence of police and other independent witnesses.
- vi) the body of Suman was found lying inside the room. A message was also found written on the wall of the room.
- vii) the death of Suman was caused by asphyxia as a result of ante mortem manual strangulation.

16. From the above facts, it stands proved that death of Suman had occurred in the rented room where she was living with the appellant. The body of Suman was recovered pursuant to the disclosure statement of the appellant. It also stands proved that after the appellant had locked the room on 16.03.2015, it remained locked till 18.03.2015 when he opened the same in the presence of the police and other independent witnesses.

17. During the trial, the appellant had not only denied the prosecution case but had also taken a stand that he had not taken any room on rent from PW-1 and that he was arrested from Aligarh. The said stand of the appellant is belied by the testimonies of independent witnesses, who were the landlord and other tenants of the house. The fact that the room was in the possession and occupation of the appellant along with the deceased, is not only proved by the cumulative testimonies of PW-1, PW-2, PW-3, PW-4 and PW-6 but is also corroborated by the fact that the message which was found scribbled on the wall of the room, was proved to have been written by the appellant, as per the FSL report. In these circumstances, the

burden was shifted on the appellant to explain the death of Suman in the room which was in his possession and occupation. The appellant has failed to discharge this burden cast upon him under Section 106 of the Indian Evidence Act. Reference in this regard is made to a decision of the Supreme Court in ***Trimukh Maroti Kirkan vs. State of Maharashtra (2006) 10 SCC 681*** wherein it was held as under:

“14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties.

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation”.

(Emphasis added)

18. Thus, it stands established that the death of Suman was caused by way of manual strangulation by the appellant in the rented room under his possession and occupation.

19. Ms. Rakhi Dubey, Ld. Counsel for the appellant has argued, albeit in the alternative, that the present case is covered under Section 304 Part II of the IPC. Examining the case from that perspective, it has emerged from the evidence on record that the matrimonial discord between the

appellant and the deceased had resulted in frequent quarrels which were heard by the landlord and the neighbouring tenants. PW-1, PW-2, PW-3, PW-4 and PW-6 have testified with respect to the frequent quarrels, although with a caveat that they only used to hear the voice of Suman. The contents of the message written on the wall by the appellant also points towards the existence of strained relations between the appellant and the deceased. A closer look at the nature of the injuries, as detailed in the post mortem report, reveal that the injuries on the body of the deceased appear only in the neck region, which were consequent to manual strangulation. There are no other injury marks on any other part of the body of the deceased.

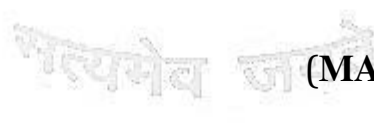
20. From the totality of the circumstances existing on record, it can be concluded that though the appellant had knowledge that his act was likely to cause death, he had no intention to cause death. The appellant is thus found guilty of committing an offence punishable under Section 304 Part II of the IPC. Reference in this regard is made to a decision of a co-ordinate Bench of this Court in *Jitender Pal Singh vs. State* 2016 (2) JCC 956 wherein while relying on a decision of the Supreme Court in the case of *State of Punjab vs. Joginder Singh & Anr.* (2003) 12 SCC 179, the Court came to the conclusion that the appellant therein had no intention to kill and thus his conviction was converted from Section 302 IPC to Section 304 Part II IPC.

21. The conviction of the appellant in the instant case under Section 302 IPC is, therefore, set aside and modified to an offence punishable under Section 304 Part II IPC. As far as the sentence awarded to the appellant is concerned, as per the nominal roll dated 10.01.2019, received from the jail authorities, the appellant has already undergone a sentence for 3 years 9

months and 22 days with a remission of two months and 25 days. The maximum punishment provided for under Section 304 Part II IPC is 10 years. As per the said nominal roll, the appellant is presently 44 years old. The order on sentence records that the appellant hails from a poor background. His conduct in jail was reported to be satisfactory. As per the report of the Probation Officer, he had all the remorse for his guilt. It was also recorded that the appellant does not have the financial capacity to pay the compensation.

22. Looking at the totality of facts and circumstances of the present case, we are of the considered view that ends of justice would be met, if the appellant is sentenced to undergo rigorous imprisonment for seven years and pay fine of Rs.5,000/- and in default of payment of fine, to undergo R.I. for a further period of six months. The period of sentence already undergone by the appellant shall be set off.

23. The appeal is disposed of in the above terms. A copy of this judgment be sent to the concerned Jail Superintendent. The Trial Court record be sent back forthwith along with a copy of this judgment.

 (MANOJ KUMAR OHRI)
JUDGE

(HIMA KOHLI)
JUDGE

FEBRUARY 15, 2019/ j/ 'dc'