



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

% Decided on: 19th September, 2022

+ **CRL.A. 536/2019**

PAPPU

..... Appellant

Represented by: Mr. Sushil Kumar, Mr. Intikhab Alam,
Mr. Anuj Kumar, Advs.

versus

STATE

..... Respondent

Represented by: Mr. Prithu Garg, APP for State with
Insp. Sanjay Kumar, PS Aman Vihar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MR. JUSTICE ANISH DAYAL

MUKTA GUPTA, J. (ORAL)

CRL.M.A. 13338/2022 (early hearing by A)

1. By this application the appellant has sought early hearing of the appeal since the appellant has undergone more than 9 years of custody.
2. Notice. Learned APP for the State accepts notice.
3. In view of the sentence undergone by the appellant, early hearing of the appeal is allowed and the appeal is taken up for hearing.
4. Application is disposed of.

CRL.A. 536/2019

1. By the present appeal, the appellant challenges the impugned judgment dated 30th July, 2018 whereby he was convicted for offences punishable under Section 302/376 IPC and the order on sentence dated 31st July, 2018 whereby he was awarded imprisonment for life and to pay a fine



of ₹3000/- each for offence punishable under Section 302/376 IPC, in default whereof to undergo simple imprisonment for three months each.

2. Learned counsel for the appellant challenging the conviction submits that from the statement of the investigating officer/PW-25 and the main investigating officer/PW-29 it is evident that when they saw the dead body at 6.30 PM, blood was oozing out from the body parts when the deceased was not present. Thus, the allegation that in the absence of the other family members deceased committed rape and murder of the deceased 'S' is wholly unwarranted. The motive assigned to the appellant to commit the alleged offence is vague. There are material contradictions in the testimony of the witnesses. Conviction of the appellant is based on circumstantial evidence in which the chain of circumstances is not complete.

3. Learned APP on the other hand contends that post-mortem report of the deceased clearly shows that before she was strangled there was sexual assault on her and besides there are other struggle marks resulting in abrasions on body. Further, as per the FSL report, semen stains were detected on the vaginal swab of the deceased as also her leggings, DNA whereof tallied with that of the accused and hence prosecution by way of circumstantial evidence proved beyond reasonable doubt that the appellant committed the alleged offence.

4. Investigation in FIR No. 435/2014 at PS Aman Vihar started on a PCR call received at 5.35 PM on 4th May, 2014 which was recorded vide DD No. 42-B. On the said information SI Randhir along with other Police staff reached H.No. A-583, Agar Nagar, Prem Nagar, Delhi where they found dead body of a woman aged about 26 years at the first floor of the house lying on the bed. A green colour dupatta was tied around the neck of the



dead body. There was mark of strangulation on the neck and other injuries on the body. No eye-witness was found at the spot and on the said basis of spot inspection FIR under Section 302 IPC was registered. Crime team reached the spot and collected the bed-sheet and scattered clothes and inquest proceedings was carried out.

5. Post-mortem of the deceased 'S' was conducted by Dr. Manoj Dhingra who appeared as PW-8 and found the following injuries on her body:

- “1. Abrasion reddish colored linear 2x0.3 cm over mid frontal scalp area.*
- 2. Abrasion reddish colored oval 0.5 x 0.5 cm over medical aspect of right upper eyelid.*
- 3. Three abrasion reddish colored oval each measuring 0.5x0.5 cm over just lateral to lateral canthus of left eye.*
- 4. Abrasion reddish colored 0.7 x 0.5 cm over mid front of left jaw bond.*
- 5. Abrasion reddish colored 1x0.5 cm over front of right half of chin.*
- 6. Green colored chunni seen tied around the neck with a fixed knot under left mandibular angle. On removal of chunni, Pressure abrasion 3.2 cm wide skin deep seen horizontally completely encircling the neck passing 3.7 cm below both mastoid process & at the level of Adam's Apple. Total circumference was 29 cm. Multiple petechial hemorrhages seen along both edges of wound. Cut section shows extravasation of blood in superficial neck muscles under the wound area. Mucosa of thyroid & cricoids cartilage is congested, hyoid bone intact.*
- 7. Abrasion reddish colored 1x0.5 cm over right elbow.*
- 8. Abrasion reddish colored 1x0.5 cm over front of right knee.*



On internal examination we found following injuries on neck structures : small amount of generalized extravasation of blood seen to all superficial muscles of neck under injury no.6. Hyoid bone, thyroid & cricoid cartilage are intact, their mucosa is congested.

On internal examination of uterus, Ovaries, Fallopian Tubes following injuries : fresh tears upto base of hymen seen at 5 to 7 O'clock position with redness & edema of hymenal tissue with fresh bright red blood in vulval region. Vaginal posterior wall & outer surface of cervix opening showed congestion & edema. No products of conception seen.

On examination of head we found following injuries:

Scalp- Extravasation of blood seen to left temporal scalp areas.

Skull-No fractures seen to skull.

Brain-congested & edematous, subdural & subarachnoid hemorrhage seen to left parieto temporal lobes."

6. Dr. Manoj Dhingra opined that the cause of death is due to asphyxia as a result of strangulation per injury No.6 which was fresh & ante-mortem at the time of death & is sufficient to cause death in ordinary course of nature. There is an evidence of sexual intercourse. All injuries are ante-mortem & caused by blunt force. In his cross-examination Dr. Manoj Dhingra/PW-8 clarified the injuries mentioned in the post-mortem report cannot be by fall from the bed or by hitting on the wall on her own, injury No.6 on external examination could not be a self-inflicted injury and the death in this case was due to asphyxia as a result of strangulation.

7. Statement of the husband of the deceased Manoj who appeared as PW-13 was recorded under Section 161 Cr.P.C. who also deposed before the Court on the same lines. He stated that he was a carpenter by profession and had married the deceased on 10th March, 2008. Suresh his brother-in-law



(sadu) had to go to attend the marriage of his nephew (bhatija) with family and thus Suresh, his wife and children went for the marriage. Suresh asked his wife and Manoj to look after their house in the meantime and thus he along with his wife came to the house of their brother-in-law at Agar Nagar, Prem Nagar. Suresh and his family left the house on 1st May, 2014 and on the same date he joined his wife at the said house. He used to go to Shahdara for his work from his brother-in-law's house. Pappu the appellant herein was the son of his maternal uncle who came to the said house on 3rd May, 2014. Manoj had to pay a sum of ₹1500/- to Pappu. Pappu had met Manoj on 1st May, 2014 as well at Balbir Nagar, Shahdara where the witness used to work and asked him for the payment, to which he stated that he would be paying him the next day i.e. on 2nd May, 2014. On enquiry Manoj told the appellant that he was staying at the house of his brother-in-law. Appellant further inquired where his wife was staying, to which he informed that she was also staying at the same place. On 2nd May, 2014 Pappu made a phone call to the witness and Manoj told him that he will get the money on 3rd May, 2014. Despite this Pappu repeatedly called him but he did not pick up the phone. On 3rd May, 2014 he did not go to the work being a holiday. Pappu came to his brother-in-law's place at Agar Nagar, Prem Nagar-III, Nangloi where he was staying at that time. Pappu told him that he had taken the said address by making phone call to his brother-in-law Suresh, in whose house they were staying. Pappu demanded more money and started quarrelling with him. On this Manoj told him to go back and take back whatever was due subsequently. Manoj further stated that since at that time he was staying in his brother-in-law's place, it was not proper that a quarrel should take place and that he was only to give ₹1500/- and nothing more was



due. However, the appellant did not go back and stayed there at night. On 4th May, 2014 in the morning, when his wife was going to the kitchen for making tea, Pappu followed her to the kitchen. After making tea when his wife came out, she told him that Pappu tried to strangle her, however he could not believe the same and thought that his wife was joking. He told his wife not to worry and that the accused will not come thereafter to their house and he will make him understand. He along with the appellant went to Nangloi Metro Station, from there took two tokens one for Shahdara and the other for Karkardooma, as Manoj had to go to Shahdara and Pappu had to go to Karkardooma. They both boarded Metro Train proceeding to Kirti Nagar when Manoj got down at Ashok Park Main Metro Station and told Pappu to get down at Kirti Nagar Metro Station and take another Metro coming from Dwarka which would take him to Karkardooma. While he had taken the train from Ashok Park Main Metro Station coming from Rithala towards Dilshad Garden for going to Shahdara, he made a phone call to his wife after getting down at Ashok Park Main Metro Station to inform that he has given ₹1500/- to the appellant in train and was now going for work, but he could not talk to his wife due to connectivity problem. He reached his place of work at Shahdara at around 10 – 10.15 AM. Pappu made a call on his phone at around 10.30 AM stating that his Aadhar Card and Driving License were left at home at Agar Nagar, Prem Nagar-III, Nangloi. He told the appellant that he would bring his Aadhar Card and Driving License and the matter ended there. At around 4.00 PM in the evening, he received a phone call from his brother-in-law Suresh that his wife had expired, so he went back home. After reaching home he made a phone call to the appellant stating



“tune meri wife ko maar diya na, ye achha nahi kiya”, on which the appellant disconnected the phone.

8. Statement of the neighbour Smt. Sangita/PW-5 was also recorded who in her deposition stated that on 4th May, 2014 at about 5 PM she heard the noise in the gali. When she went to the house of Suresh, who had gone along with his wife and children to attend a marriage, she saw his sister-in-law lying dead on the bed. There was injury mark on the foot of the deceased and one chunni was tied around her neck. She made a call on 100 number from her mobile phone but had not seen who strangulated her.

9. Statement of another neighbour Ms. Anju Devi was also recorded who deposed as PW-10 and stated that she was doing the work of separating wire from plastic tyre at her house. On 1st May, 2014 Smt. Sunita along with her family had gone to attend the marriage of her nephew. While going Smt. Sunita left her sister ‘S’ in their house to look after their house. Sunita also asked the witness to look after her house in her absence, thus she would ask ‘S’ if any help was needed. On 3rd May, 2014 ‘S’ asked her to bring some vegetables from the market. When she asked ‘S’ to accompany her to market, she told her that she was going to cook food for her husband and brother-in-law who had come over there. When she returned back with the vegetables and went to deliver the vegetables, she saw that the appellant was present there. She came to know that the appellant was the brother-in-law of ‘S’ and his name was Pappu. On 4th May, 2014 it was a Sunday and about 8.30 AM she was washing clothes when she saw husband of ‘S’ and Pappu, the appellant herein were passing from the gali and they were going somewhere. Appellant Pappu returned back and she saw him knocking the kundi of house of ‘S’ at about 11 to 11.15 AM. Pappu went inside the house



after 'S' opened the door. She did not know thereafter what happened nor did she see the appellant going out of the house. At about 4 to 4.30 PM she came out and was standing near gate of her house when she saw the two children of 'S' weeping. When she enquired from the son of the deceased who was elder to the daughter, he told her that her mother was sleeping upstairs. She carried the daughter of the deceased in her arms and went upstairs calling 'S' by her name but she did not respond. When the witness reached upstairs at first floor, she saw that the door of the room was open and 'S' was lying on the bed. She was looking dead and a chunni was tied around her neck. She came down and raised alarm when other neighbour made a PCR call.

10. From the evidence of these witnesses, it is evident that Pappu, the appellant herein was staying with the deceased and her husband from the previous day and in the morning though ostensibly he left with the husband of the deceased but came back on the pretext that his Aadhar Card and Driving License were left, despite the deceased's husband stating that he would get the same. His coming back to the house was witnessed by the neighbour Anju Devi. Further, at about 4.00 PM her children were found crying and when she went to sleep she found 'S' not responding, with the chunni tied around her neck.

11. Besides post-mortem report which shows the cause of death as strangulation and that sexual assault took place on the deceased prior to the strangulation, the FSL report Ex.PW-17/B notes that semen was detected on the exhibits 4b, the legging of the deceased as also vaginal swab. On DNA analysis the alleles from the source of Ex.9 (blood was of the accused) was accounted in the DNA profile generated from the source of Ex.4b legging



and Ex.7 cotton wool swab i.e. vaginal swab of the deceased. This evidence thus clinchingly proves that the appellant committed sexual intercourse with the deceased and the fact that the sexual intercourse was contrary to her wishes is evident from the number of abrasions as noted in the post-mortem report, which show the marks of struggle and that he also strangled the deceased.

12. Further, the prosecution also led evidence of the Nodal Officer of Aircel/ PW-24, who testified from the Call Detail Records of the appellant. The CDR analysis clearly corroborates the statement of the husband of the deceased as per which at 9.22.34 hours on 4th May, 2014 the cell phone ID is at West Punjabi Bagh which then moves on to Rama Road Industrial Area, then to Shadipur Metro Station to Patel Nagar and then to Karol Bagh, whereafter at 10 O'clock it again comes back to West Patel Nagar, then to Rama Road Industrial Area, to Village Sikdar Pur and at 10.36.32 hours it is at village Nangloi Jat, Delhi. Further, the location of the appellant at 12:50:46 hours to 12:55:15 hours to 13.02 hours is at Prem Nagar, Kirari Chowk, Delhi and as per the post-mortem report the time of death is from 10.00 AM to 1.00 PM and the appellant's phone is switched off after 10.36:32 AM till 12.56.40 PM.

13. Contention of learned counsel for the appellant that the motive of the appellant to commit the offence is vague cannot be accepted for the reason even prior to the offence committed the deceased had in the morning itself had reported to her husband that the appellant tried to strangle her, which the husband thought that she was joking. Further, it is evident that the motive was to commit sexual intercourse and when resistance was shown by the deceased, the appellant committed the murder of the deceased by



strangulation. The fact that when investigating officers saw the dead body, blood was oozing out from various parts is due to the nature of injuries caused to her and the time since death has been given in the post-mortem report and testified by Dr. Manoj Dhingra, who performed the port-mortem on the dead body.

14. In view of the evidence led by the prosecution as noted above, this Court finds no error in the impugned judgment of conviction and order on sentence. Appeal is accordingly dismissed.

15. Copy of this judgment be uploaded on the website of this Court and be also conveyed to the Superintendent Tihar Jail for intimation of the appellant and updation of record.

(MUKTA GUPTA)
JUDGE

(ANISH DAYAL)
JUDGE

SEPTEMBER 19, 2022
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