

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

% Reserved on: 9<sup>th</sup> February, 2023  
Decided on: 8<sup>th</sup> May, 2023

+ **CRL.A. 885/2019**

DESH PAL @ DESH RAJ ..... Appellant  
Represented by: Mr.Manu Sharma, Mr.Karthik  
Khanna, Mr.Karl Rustom Khan and  
Mr.Gyanendra Kumar, Advocates.

versus

STATE ..... Respondent  
Represented by: Mr.Prithu Garg, APP for the State.

**CORAM:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**HON'BLE MS. JUSTICE POONAM A. BAMBA**

**MUKTA GUPTA, J.**

1. By way of this appeal, the appellant challenges the judgment of the learned Trial Court dated 14<sup>th</sup> February, 2019 whereby the appellant was convicted for murder of one Santosh (deceased), who was the wife of the appellant as also the order on sentence dated 16<sup>th</sup> February, 2019, whereby the appellant was directed to undergo imprisonment for life along with fine of ₹5,000/- in default whereof, simple imprisonment for one month for offence punishable under Section 302 of Indian Penal Code, 1860 ("IPC").

2. Briefly as per the prosecution case the appellant was unemployed and was a liquor addict, and used to abuse his wife/deceased daily. On the intervening night of 24<sup>th</sup> and 25<sup>th</sup> September, 2014, the appellant stuffed victim's mouth with a cloth and strangled her to death with a *chunni* and fled from the spot. The dead body was discovered by the eldest daughter of the appellant and deceased baby Rani (PW-1). When PW-1 found her mother not responding, she untied the knot of the *chunni* of orange colour,

tied around the neck of the deceased and also removed the cloth from her mouth. Thereafter, PW-1 went to her *nani*'s house which was five minutes away and told her *nani* that her mother's body was cold, on which her *nani* (PW-3) along with her *mama* Rinku (PW-2) came to the spot. Rinku (PW-2) made a call to number 100, which was recorded vide DD No.6A. SI Sanjay Kumar (PW-22) reached the spot i.e. Jhuggi, Thokar No.8, Yamuna Khadar, opposite Lalita Park, Laxmi Nagar at about 6.15 AM. Thereafter, IO/Insp. Hari Singh (PW-25) reached the spot and recorded the statement of PW-1 and prepared the *rukka* on which FIR No.1969/2014 dated 25<sup>th</sup> September, 2014 under Section 302 IPC at PS Shakarpur was registered (Ex.PW-11/A). In the meantime, the dead body was shifted to LBS Hospital and from there it was shifted to Sabzi Mandi mortuary. After identification of the dead body, it was sent for post-mortem examination. On 30<sup>th</sup> September, 2014, a secret informer disclosed that the appellant, who had murdered his wife five-six days ago, had come back to his jhuggi i.e. Tokar No.8, *Mahender ka Khet* to meet his children, pursuant to which the appellant was arrested vide arrest memo (Ex.PW-12/A) and his disclosure statement (Ex.PW-12/C) was recorded. After completion of investigation, charge-sheet was filed and the appellant was charged for murder of his wife/deceased Santosh punishable under Section 302 IPC. To prove its case the prosecution examined 25 witnesses.

3. Dr.Akash Jain prepared the MLC (Ex.PW-6/A) vide which the deceased was declared "brought dead" and therefore, she was shifted to mortuary for post-mortem. Dr.Sandeep Garg (PW-5) conducted the post-mortem examination on the dead body of the deceased on 25<sup>th</sup> September, 2014 and tendered his report (Ex.PW-5/A) and opined:

“External Examination:

*Reddish brown ligature mark present on front and left side of neck with the width wearing between 0.3 cm to 0.5 cm. With base depressed and grooved. Margins showing abrasions and bruises. Ligature mark was 6 cm below the chin and 8 cm above sternal notch, 8 cm from left mastoid process.*

Internal Examination

*1. Brain matter meninges and cerebral vessels were congested. Underneath ligature mark there was a dark red bruising of soft tissues and muscles. Posterior fragment of left of hyoid bone was fracture with fractured ends reddish and bruised.*

*2. All other internal organs were congested.*

*3. Stomach was found to contain semi digested food.*

Opinion:

*In my opinion the cause of death was asphyxia as a result of ligature strangulation which as sufficient to cause death in ordinary course of nature. The injury number No.1 was ante mortem and fresh prior to death. The time since death was about 12 hours. The body was preserved in cold storage.”*

4. Learned counsel for the appellant assails the impugned judgment on the ground that the prosecution failed to prove its case beyond reasonable doubt and the learned Trial Court erred in convicting the appellant, and therefore, the present appeal be allowed and the appellant be acquitted. It was contended on behalf of the appellant that the appellant was innocent and was falsely implicated at the instance of Omwati (PW-3) who was the mother of the deceased. It was further contended that baby Rani (PW-1) was a child witness and thus, her testimony cannot be believed. It was also contended that the prosecution even failed to establish any motive on the part of the appellant to murder his wife. It was further contended that there is no single evidence to connect the appellant with the incident in question and that the conviction is solely based on hearsay evidence. It was further

pointed out that there were at least 12 public persons present at the spot from whom police made investigation however, none of those witnesses were produced before the Court during trial. It was also pointed out that the cloth allegedly put in the mouth of the deceased was not recovered by the police. It was the case of the appellant that the deceased was killed by someone else with the motive of theft as the *mangasutra* of the deceased was not found by the police. Further, the in-laws of the accused who resided nearby came to his *jhuggi* and started beating him, on which he ran away from the house to save himself.

5. On the other hand, learned APP for the State submitted that the present case was based on circumstantial evidence and the link of the chain of circumstances being established, the appellant was rightly convicted by the learned Trial Court and thus, the present appeal be dismissed. Learned APP relies upon the following facts:

- i. Baby Rani (PW-1) in line with her statement under Section 164 of the Code of Criminal Procedure, 1973 (Cr.P.C.), in her testimony in Court, categorically deposed that a quarrel ensued between the appellant and the deceased on the night before victim's death after which she and her sibling went to sleep and her parents slept on the floor. She stated that at about 5.00 AM, she was woken up by her younger brother as he was hungry and it was at this instance that when she called her mother, she did not respond and a *chunni* was found tied around her mother's neck and a cloth stuffed in her mouth.
- ii. Rinku (PW-2) and Omwati (PW-3) deposed that the appellant and the deceased used to live in the same house and corroborated the version of Rani (PW-1). Ganga Sahay (PW-4) deposed that on the

intervening night of 24<sup>th</sup>-25<sup>th</sup> September, 2014 he woke up after hearing the “crying noises”, and on coming out of his house he saw many people gathered outside deceased’s *jhuggi* and the deceased lying motionless on the floor.

iii. As per the post-mortem report (Ex.PW-5/A), the cause of death was opined to be asphyxia as a result of ligature strangulation which was sufficient to cause death. And as per the subsequent opinion (Ex.PW-5/B), it was opined that the strangulation was possible using the *chunni* seized from the spot.

iv. The appellant was not found at the spot at the time when the dead body was found and had rather absconded and was arrested five days later on 30<sup>th</sup> September, 2014. Further, the explanation rendered by the appellant in his statement under Section 313 Cr.P.C. is not plausible and hence, cannot be relied upon.

6. Having heard both the parties at length and perusing the record the following evidence emerges.

7. Baby Rani (PW-1) deposed that around eight months ago (she does not remember the date) at about 5.00 AM her brother Manish woke her up as he was feeling hungry, for which she called her mother/deceased but her mother/deceased did not respond. She saw a *chunni* around the neck of her mother/deceased and a cloth in her mouth. She stated that her entire family was present in the house in the same room except her father/appellant. She untied the knot of the *chunni* and removed the cloth from her mouth and thereafter, immediately went to her *nani*’s house which was at a five minutes’ walking distance. She told her *nani* that her mother’s body was cold on which her *nani* along with her *mama* Rinku came to her house and

her *mama* made a call to the police at number 100. Police recorded her statement (Ex.PW-1/A). Her statement was also recorded by the Magistrate under Section 164 Cr.P.C. on 7<sup>th</sup> October, 2014 (Ex.PW-1/B). Rinku (PW-2) corroborated the version of Rani (PW-1).

8. Omwati (PW-3) deposed that the appellant was a liquor addict and used to beat her daughter daily. On the intervening night of 25<sup>th</sup>-26<sup>th</sup> September, 2014 at about 5.00-5.30 AM she was sleeping in her *jhuggi* when her maternal grand-daughter Rani woke her up and told her “*nani mummy ko kuch ho gaya he, aap jaldi chal kar unhe dekho*”. On this she immediately went to the *jhuggi* of her daughter/deceased where she saw the deceased lying on the floor. She tried waking the deceased up but there was no movement in her body. The appellant was not present at the house at that time and she asked her son Rinku to call at number 100 on which the PCR van and thereafter, local police reached the spot. In her cross-examination, she stated that when she reached the spot, 10-12 public persons were already there. She also stated that her daughter/deceased was not wearing any *mangalsutra* or any other neck ornament.

9. Ganga Sahay (PW-4) deposed that the deceased was his niece and that the appellant was a liquor addict, who used to beat the deceased. He stated that on the intervening night of 25<sup>th</sup>-26<sup>th</sup> September, 2014 at about 5.00-5.30 AM, he woke up after hearing the noise of cryings on which he came out of the *jhuggi* and saw many persons gathered outside the *jhuggi* of the deceased. He saw the deceased lying on the floor and that there was no movement in her body. He further corroborated the version of Omwati (PW-3).

10. Insp. Hari Singh (PW-25) deposed that on 25<sup>th</sup> September, 2014 he received DD No.6A (Ex.PW-10/A) on which, he along with Ct. Brij Kishor, HC Jasbir and Ct. Devender went to the place of incident and found a dead body of a lady lying on the floor of the *jhuggi* whose name was found to be Santosh. The head of the dead body was towards East side and feet in the West side. He observed some blueish marks on the neck of the deceased and a multi-coloured *chunni* lying at the right hand of the body. He called the crime team and recorded the statement of Rani (Ex.PW-1/A). The said *chunni* was seized vide seizure memo (Ex.PW-22/A). He thereafter, prepared the *rukka* and got the FIR registered. He prepared the site plan (Ex.PW-25/B) and in the meantime, shifted the body to LBS Hospital from where it was shifted to mortuary of Sabzi Mandi. The dead body was identified by Ganga Sahay and Omwati (Ex.PW-4/A and Ex.PW-3/A respectively) and after the post-mortem examination, the dead body was handed over to the relatives (Ex.PW-3/B). On 30<sup>th</sup> September, 2014, the appellant was arrested from near the place of incident vide arrest memo (Ex.PW-12/A) and his disclosure statement (Ex.PW-12/C) was recorded. Statement of Rani under Section 164 Cr.P.C. (Ex.PW-1/B) was also recorded and the *chunni* recovered was sent to the doctor at mortuary and subsequent opinion was sought. *Chunni* along with clothes of the deceased and blood samples were sent to FSL for opinion (Ex.PW-18/A and 20/A). After completion of investigation, charge-sheet was filed.

11. In his statement under Section 313 Cr.P.C. the appellant admitted that he was present at the spot in the morning of 25<sup>th</sup> September, 2014 with his children. He stated that he used to work as a vegetable vendor and never consumed liquor. He further stated that when he woke up in the morning,

he found his wife dead and observed that the *mangalsutra* was missing and there were some marks on the neck of his wife/deceased. He also found the household articles scattered. He stated that he doubted that some thief had committed theft of *mangalsutra* and during that, some scuffle would have ensued and the thief strangled his wife/deceased. He further stated that when he found his wife dead, he woke up all his children and started crying. On this hue and cry, someone informed his mother-in-law, who came there along with her relatives and on doubting him, started beating him and in order to save himself, he fled away. Later, when he came back and was interacting with his children the police came, arrested him and falsely implicated in the present case.

12. It was the case of the prosecution that the appellant was the husband of the deceased and that they used to reside together at jhuggi, Thokar No.8, Yamuna Khadar, opposite Lalita Park at Laxmi Nagar with their two children. On the intervening night of 24<sup>th</sup> and 25<sup>th</sup> September, 2014, the appellant strangled her wife with *chunni* and fled from the spot and that the dead body of the deceased was discovered by the two daughters in the morning of 25<sup>th</sup> September, 2014 after which the daughters informed their *nani* Omwati (PW-3), whereafter, the police was informed.

13. The appellant admitted his relationship with the deceased and also admitted his presence at his house/*jhuggi* on the night of 24<sup>th</sup> September, 2014. He also stated that he was present in the morning of 25<sup>th</sup> September, 2014, however, when Omwati arrived at the spot, she accused the appellant of having murdered the deceased after which, people gathered there started beating him and consequently, he fled away from the spot. According to the appellant, his wife was found dead when he woke up in the morning and he

observed that her *mangalsutra* was missing and there were some marks on her neck. So, he doubted that a thief may have taken the *mangalsutra* and strangled her. This explanation is not plausible for the reason if some thief had entered the jhuggi at night and snatched the deceased's *mangalsutra* and strangled her, the appellant who was also sleeping nearby would have woken up. Further, as per the subsequent opinion the *chunni* with which strangulation was possible was found around the neck of the deceased. The appellant did not even untie the knot of the *chunni*, which was untied by the daughter (PW-1).

14. The contention put forth on behalf of the appellant that he was falsely implicated at the instance of Omwati remains unsubstantiated. Further, the contention that the testimony of baby Rani (PW-1) cannot be believed on the ground that she was a child witness ought to be rejected at its threshold as merely because of her age, testimony of a witness cannot be rejected if it is otherwise cogent and inspires confidence. Baby Rani (PW-1) was consistent in her testimony before the Court which was in conformity with her statement recorded under Section 164 Cr.P.C., and therefore, there is no reason to reject her testimony.

15. It was also pointed out that the prosecution failed to establish any motive on the part of the appellant to commit murder of his wife/deceased, however, the same cannot be a ground for acquittal of the appellant as it is not always possible to prove the motive in cases of circumstantial evidence. Even otherwise, baby Rani had categorically deposed in her testimony that a quarrel ensued between the appellant and the deceased a night before, after which she and her sibling went to sleep and that the appellant and the deceased also went to sleep.

16. The burden of proof shifts on the appellant to prove the circumstances in which the dead body of the deceased found from inside the house where the appellant and deceased were residing, in terms of Section 106 of the Indian Evidence Act, 1872. The explanation given by the appellant being not plausible, the appellant has not been able to rebut this onus, in terms of the law laid down by the Hon'ble Supreme Court in the decision in (2006) 10 SCC 681 Trimukh Maroti Kirkan vs. State of Maharashtra, therefore, a finding of guilt can be safely returned against the appellant.

17. In similar circumstances, Hon'ble Supreme Court in the decision reported as 2022 SCC OnLine SC 673 Sabitri Samantaray Vs. State of Odisha and Bidyadhar Praharaj Vs. State of Odisha held that the prosecution having succeeding in establishing the intention of the appellants therein for commission of the offence and such intention when analyzed in the light of statements made by all the sets of witnesses and fatal injuries sustained by the deceased at the relevant place and time certainly makes out a strong case that the death of the deceased was indeed caused by the appellants therein. Once the prosecution has successfully established the chain of events, burden was on the appellants therein to prove it otherwise. Thus, the High Court rightly observed that in the light of Section 106 of the Indian Evidence Act, the onus was now on the appellants to disclose how the deceased lost his life. Referring to the decision reported as 2015 4 SCC 393 Ashok Vs. State of Maharashtra, it was held as under:

*“12. From the study of above stated judgments and many others delivered by this Court over a period of years, the rule can be summarized as that the initial burden of proof is on the prosecution to bring sufficient evidence pointing towards guilt of accused. However, in case of last seen together, the*

*prosecution is exempted to prove exact happening of the incident as the accused himself would have special knowledge of the incident and thus, would have burden of proof as per Section 106 of Indian Evidence Act. Therefore, last seen together itself is not a conclusive proof but along with other circumstances surrounding the incident, like relations between the accused and the deceased, enmity between them, previous history of hostility, recovery of weapon from the accused etc., non-explanation of death of the deceased, may lead to a presumption of guilt”.*

18. As per the appellant’s own version despite the fact that the appellant was present at the house when the dead body was found, no call was made by him at number 100 to inform the police or the family members of the deceased about the incident.

19. Therefore, this Court finds no infirmity in the impugned judgment of the learned Trial Court and order on sentence and accordingly, the present appeal is dismissed.

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

(MUKTA GUPTA)  
JUDGE

(POONAM A. BAMBA)  
JUDGE

**MAY 08, 2023**  
**‘vn’**