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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 2nd February, 2023Decided on: 8th May, 2023

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CRL.A. 903/2019

YOGESH

..... Appellant

Represented by: Mr. S.B. Dandapani, Adv. DHCLSC
(through VC).

Versus

STATE

..... Respondent

Represented by: Ms. Shubhi Gupta, APP for State.

CORAM:**HON'BLE MS. JUSTICE MUKTA GUPTA****HON'BLE MS. JUSTICE POONAM A. BAMBA****MUKTA GUPTA, J.**

1. By this appeal, the appellant challenges the judgment of learned Trial Court dated 22nd November, 2018, whereby the learned Trial Court held the appellant guilty for murder of his father Bhagwan Das Moolchandani ("deceased"); and also the order on sentence dated 29th November, 2018, whereby the appellant was directed to undergo rigorous imprisonment for life alongwith fine of ₹50,000/- in default whereof, to undergo rigorous imprisonment for 6 months for offence punishable under Section 302 of the Indian Penal Code, 1860 (IPC).

2. Brief facts of the prosecution case are that on 05th October, 2014, the complainant Karuna (PW-3) left her house with her friend Moushmi for Safdarjung Enclave Market at about 3 PM, leaving behind her father/deceased and her brother/appellant, and at about 5-5.15 PM when she

returned back home, she found the door of her house bolted from inside and after her continuous knocking, after about 3-4 minutes, the appellant opened the door. On entering the house, she saw her father lying in one corner in a pool of blood with injuries on his head and blood oozing out and one blood stained '*sotta*' was lying in the drawing room of the house. Thereafter, she started shouting and crying on which the neighbours and relatives gathered and one Manish (PW-1) took the deceased to Mata Chanan Devi hospital where, the deceased was declared "brought dead". Information was given to the police which was recorded vide DD No.43B (Ex.PW-2/A) which was received by SI Laxman Kumar (PW-16) and thereafter, he alongwith Ct.Vijay reached the spot i.e. B-3/B/88A, Janakpuri, where SI Laxman got to know that the deceased was already taken to Mata Chanan Devi Hospital. He found the door of the house locked from inside, and only after repeated requests, the appellant opened the door. Inside the house, blood was found scattered on the ground and walls as also on the clothes of the appellant. Thereafter, the appellant was sent to the police station. After receiving information regarding death of the deceased, statement of Karuna (Ex.PW-3/A) was recorded and *rukka* (Ex.PW-16/A) was prepared, upon which FIR No. 1090/2014 dated 05th October, 2014 under Section 302 IPC at PS Janakpuri (Ex.PW-2/C) was got registered. The appellant was arrested by the IO/ Insp. Naresh Kumar (PW-17) vide arrest memo Ex.PW-16/B and his disclosure statement (Ex.PW-16/D) was also recorded.

3. The body was sent for post mortem examination and Dr. B.N. Misra (PW-7) at DDU Hospital conducted the post mortem examination on the body on 07th October, 2014 and tendered his report (Ex.PW-7/A). He opined:

EXTERNAL EXAMINATION: External Injuries:-

1. *Lacerated wound of size 4cm x 1 cm x deep to bone present on the frontal region of head with marginal contusion and ragged margins.*
2. *Lacerated wound of size 3.5 cm x 1 cm x deep to bone present on the right parietal of head with marginal contusion and ragged margins.*
3. *Right eye (peri-orbital region) contused and blackish in colour.*
4. *Right ear lobule contused with tearing of lower half part of lobule and attached with muscle tags.*
5. *Right side of neck (whole part) contused and reddish in colour. On dissection the underlined muscles and fascia contused.*
6. *Multiple bruises of different dimensions varying from 3 cm x 2 cm to 6 cm x 5 cm present on the both upper limbs, both sides of gluteal region and lateral aspect of left thigh, showing reddish in colour.*

INTERNAL EXAMINATIONA. - HEAD

A. *Scalp: massive Sub scalp haematoma present on the frontal, bilateral temporoparietal and vertex part of head with contusion on the underneath tissue of the respective lacerated parts.*

B. *Skull: Fractured (linear) frontal, right temporal and right parietal bone.*

C. *Brain, Meninges & Vessels: Massive extradural and subdural haemorrhage present on the frontal, right temporo-parietal and vertex part of brain with multiple haemorrhage contusions on the frontal lobe of the cerebrum with generalized brain oedema.*

D. *Base of skull: Fractured anterior cranial fossa, contained blood clot of about 50 ml.*

B. NECK

1. *Hyoid Bone / Thyroid Cartilage /Cricoid Cartilage / Tracheal Rings & Mucosa / Any Foreign Body in Trachea: Anterior surface of pharynx, larynx and covering fascia, muscles contused extensively with multiple foci of extravasated blood into soft tissue of neck.*

OPINION:

1. *The cause of death is due to head injury (cranio-cerebral injury) as a result of hard forceful impact upon head.*
2. *Manner of death:-Homicide.*
3. *TIME SINCE DEATH: Approx. 1¾ days prior to post mortem examination.*

Subsequent opinion (Ex.PW-7/B) of the doctor was also sought and it was opined that the produced wooden stick (*Sotta*) could have been inflicted on the body of deceased by which all the injuries, as mentioned in the postmortem report, were caused. It was also opined that injuries no. 1 and 2 independently, as well as in combination, were sufficient to cause death in the ordinary course of nature.

4. After completion of investigation, chargesheet was filed and the appellant was charged for offence punishable under Section 302 IPC for murder of his father. To prove its case, the prosecution examined 18 witnesses.

5. Assailing the impugned judgment, learned counsel for the appellant contended that the learned Trial Court erred in holding that the prosecution successfully established its case beyond reasonable doubt as there are material contradictions and inconsistencies in the testimonies of the witnesses and thus, the impugned judgment is liable to be set aside. It was contended that as per the prosecution story, the deceased was taken to the hospital by his daughter/complainant (PW-3), however, as per the deposition of Dr. Dibyalochan Sahu (PW-5), the deceased was brought to the hospital by HC Shailender of PCR. It was further contended that the investigation in this case was shoddy as no fingerprints were lifted from the alleged weapon of offence (*Sotta*). It was further submitted that there is no

direct evidence or eye witness in the present case and thus, it is still unknown as to what might have triggered the violent reaction of the appellant. It might be possible that a heated argument ensued between the appellant and the deceased and in that spur of the moment, the situation turned violent. It was further contended that the appellant was already under treatment at Sir Ganga Ram Hospital for some mental sickness and also continued to take treatment in jail for mental depression. Reliance was placed on the decision cited as (1989) 2 SCC 217 Surinder Kumar v. UT of Chandigarh. In the alternative, it was contended that in no probability, does the act of the appellant appear to be a premeditated attack, and therefore, at best, an offence punishable under Section 304 Part II IPC can be made out.

6. On the other hand, learned APP for the State contended that the judgment of the learned Trial Court was based of correct appreciation of facts and evidences, after which, the appellant was rightly convicted, and therefore, the present appeal be dismissed. Learned APP submitted that the present case was based on complete chain of circumstantial evidence all of which points to the guilt of the appellant. Learned APP submitted that the post mortem report (Ex.PW-7/A) clearly opined that the cause of death was head injury as a result of forceful impact on the head. The appellant inflicted two *sotta* blows leading to two fractures alongwith lacerated wounds and as per the subsequent opinion (Ex.PW-7/B), all injuries were caused by the *sotta* found at the place of incident. It was further pointed out that it was only the appellant who was present at the house and no other person was inside the house, besides the deceased. Further, the appellant was a habitual drinker, was disowned by his father, divested of all the property and the entire property was bequeathed in the name of Karuna (PW-3) and

appellant's mother. Kamlesh (PW-6) categorically deposed that the appellant used to beat his parents as well as his sister, and this fact was also stated by Gaurav Thind (PW-8) and Madhu Sudan (PW-10) that the appellant used to quarrel with his family members after consuming alcohol and used to demand money forcibly. To buttress these contentions, learned APP also relied upon the decisions in CrI. Appeal 945/2004 dated 18th August, 2006 Pulicherla Nagaraju @ Nagaraja Reddy v. State of A.P., 2016 (160) DRJ 151 Anil Kumar v. State of NCT of Delhi and (2012) 7 SCC 699 Kashinath Mondal v. State of West Bengal.

7. Having heard both the parties and perusing the record, the following evidences emerge.

8. Complainant/ Daughter of deceased Karuna (PW-3) deposed that her mother had expired on 13th September, 2014. On 05th October, 2014, she alongwith her friend Moushmi has gone to Safdarjung Enclave Market for matrimonial purpose and left her house at around 3 PM leaving behind her father/ deceased and brother/appellant. At about 5-5.15 PM when she returned to her home, she found the door of the house locked from inside and after repeated knocking after about 3-4 minutes, her brother/ appellant opened the door and inside the house, she saw her father/deceased lying on one corner/side of chair in a pool of blood with injuries on his head and blood oozing out from those injuries. She also saw one blood stained *sotta* lying in the drawing room. Seeing this, her friend Moushmi Dey raised an alarm, hearing which, some neighbors gathered. Karuna also informed her relatives about the incident. She also asked her brother/appellant as to what had happened, to which, the appellant replied that he did not do anything and that someone from outside entered the house, caused injuries to their

father and left. Thereafter, she alongwith Manish Kumar and other neighbors took her father/deceased to Mata Chanan Devi Hospital in Wagon-R car of Manish, where her father/deceased was declared “brought dead”. She further deposed that after the death of her mother, her father/deceased used to say that he would sell their house after her marriage and would himself reside in an old age home as the appellant was unemployed and was not doing any work. Whenever her father/ deceased used to talk about selling the house, her brother/appellant used to get annoyed. She further stated that her brother/appellant was a habitual drinker and he used to quarrel with their parents and he used to demand-money from them to purchase liquor. In her cross examination, she stated that her father/deceased had executed a Will in her favour and as per which she is the sole owner of the H.No. 88A, Pkt. B/3B, Janakpuri and that her father/deceased had disowned her brother by publishing about the same in a newspaper.

9. Moushmi Dey (PW-9) corroborated the version of Karuna but stated that when the appellant was asked about the incident, he replied that “*papa mummy ke paas jane ke liye keh rahe the, maine unko wahan bhejdiya*”. The body of the deceased was lying in a pool of blood and on which, she raised an alarm and local persons gathered around. In response to a leading question, she stated that the clothes of appellant were stained with blood and blood was also scattered on the walls at the spot.

10. Manish Kumar (PW-1) stated that on 5th October, 2014, at about 5-5.30 PM, he saw one lady weeping outside the house of Karuna on which he went to Karuna’s house, where Karuna met him and told him that her brother/appellant had killed her father and asked him to take his

father/deceased to the hospital. Appellant was present in the house but in another room. He immediately took the deceased to the hospital in his car. He further stated that he locked the door of the house from outside on request of Karuna as the appellant had locked a room in the house from inside. He also stated that he used to hear the noise of quarrel from house of Karuna, but did not know as to who used to quarrel or the reason for quarrel. In his cross examination, he stated that he had handed over the keys of the house to police who had opened the lock after returning from the hospital.

11. Kamlesh Hirnandani (PW-6) was a cousin of Karuna and deposed that on 05th October, 2014, Karuna informed him about the incident over telephone on which, he alongwith his wife left their house and on their way Moushmi told them to reach Mata Chanan Devi Hospital. At the hospital, the deceased was declared “brought dead” and thereafter, Karuna handed over a pouch containing bunch of keys and asked him to go to her house where the appellant was locked inside. When he reached the house, he saw police present there and he handed over the keys to the police who opened the lock but found the door locked from inside. After sometime, the appellant opened the door. On enquiry, the appellant stated “*papa keh rahe the ki usko mummy ke paas jana hai, maine usko mummy ke paas bhejdiya*”, and he was repeating the same time and again. The appellant also stated that he had beaten his father with *Sotta*. He also stated that the appellant was a habitual drinker and was unemployed and also used to demand money from his parents and Karuna forcibly, and the appellant used to beat them on one pretext or the other.

12. Gaurav Thind @ Tony (PW-8) was a neighbour and he stated that after reaching the spot, he tried to stop the blood oozing out from the

injuries of the deceased with the help of cotton. He stated that with the help of some public persons, he alongwith Karuna and Manish had taken the deceased to the hospital in Manish's car where the deceased was declared "brought dead". On enquiry, the appellant replied "*mera papa ne mujhe bahut sataya hai mera carrier barbad kar diya hai to yahi natija hona hai*". And after sometime, on asking again, the appellant replied "*mujhe nahi pata koi bahar se aakar maargya hoga*". He further stated that appellant was weird person was an alcoholic, and after consuming alcohol, he used to quarrel with his family members.

13. SI Laxman Kumar (PW-16) deposed that on 5th October, 2014 after receipt of DD No.43B (Ex. PW-2/A), he alongwith Ct. Vijay Singh reached the spot i.e. B-3/B/88A, Janakpuri where he got to know that the injured was taken to Mata Chanan Devi Hospital and that the main door of the house was locked from inside and after repeated requests, the appellant opened the door. Inside the house, blood was found scattered on the ground and walls and one blood-stained wooden chair was also lying there. From the public persons, it became known that the appellant had killed his father/deceased with a blood-stained wooden *sotta* lying there. Thereafter, the appellant was sent to PS Janakpuri. Crime team was called at the spot and photographs were taken. He lifted the blood-stained wooden *sotta* (Ex. PW-11/A) and one steel glass, hand towel, English newspaper, blood-stained cotton and seized them (Ex. PW-11/B). One blood-stained calendar and one goggle were also seized from the spot (Ex. PW-11/C) as also the blood (PW-11/D). After receiving the information regarding death of the deceased, he alongwith Ct. Vijay reached the hospital and collected the MLC after which they returned to the police station where statement of

Karuna (Ex. PW-3/A) was recorded and *rukka* was prepared on which FIR got registered and thereafter, further, investigation of the case was handed over to Insp. Naresh Kumar. In his cross-examination, he stated that when he reached the spot, 20-30 persons were present there and the main door of the house was found bolted from outside, on opening which, it became known that the appellant had bolted the door from inside as well. He denied the suggestion that Karuna handed over the keys to the house or had sent the keys through Kamlesh Hiranandani.

14. Insp. Naresh Kumar (PW-17) deposed that after registration of FIR, on 5th October, 2014, he alongwith SI Laxman and Ct. Vijay at about 12 midnight reached the spot. At the instance of the complainant Karuna, he prepared the site plan (Ex. PW-17/A) and also recorded the statement of the complainant. Thereafter, he came back to the police station where he interrogated the appellant, after which, the appellant was arrested (Ex. PW-16/B) and his disclosure statement (Ex. PW-16/D) was recorded. The blood-stained clothes of the appellant were also seized (Ex. PW-17/B). The post-mortem of the dead body was conducted on 7th October, 2014. After completion of investigation, chargesheet was filed.

15. Dr. Dibyalochan Sahu (PW-5) prepared the MLC of the deceased (Ex. PW-5/A) who was brought at the hospital by HC Shailender of PCR, and on examination the patient was declared “brought dead”.

16. Pooja Shrotiya (PW-18) conducted the FSL examination and tendered her biological report (Ex. PW-18/A) and serological report (Ex. PW-18/B). As per Ex. PW-18/A, blood was found on the wooden *sotta* and the clothes of the appellant. As per Ex. PW-18/B, the blood found on the wooden *sotta*

as also the clothes of the appellant was of 'B' group which tallied with the blood group of the deceased.

17. In his statement under Section 313 of the Code of Criminal Procedure, 1973, the appellant Yogesh stated that he did not commit murder of his father and that a false case was registered against him in connivance of his sister Karuna with the police because of a registered Will in favour of Karuna, as after the death of his father, Karuna became the absolute owner of the property. He stated that he was innocent and that his father had disowned him without any justification because of which he was not residing with his father at the time of incident and was not present at the house.

18. From the evidence as noted above, the prosecution has been able to prove the motive for the appellant to have committed the offence of murder of his father by the testimony of Karuna, the complainant / daughter of the deceased and sister of the appellant who stated that the appellant was unemployed doing no work, habitual drinker and used to quarrel with his parents. She further deposed that after her mother's death, her father used to state that he would sell the house for her marriage and stay in an old age home which annoyed the appellant. Further, the appellant used to demand money from the father. This witness was extensively cross examined and she also stated that her father had already executed a Will in her favour and she was thus, the sole owner of the house No. 88A, Pocket-B/3B, Janakpuri, Delhi and that the appellant had been disowned by publishing his name in the newspaper. Copy of the Will and the public notice as also public notice published in newspaper were exhibited as Ex.PW3/X, Ex.PW3/X1 and

Ex.PW3/X2 respectively. Further, complaints made by the parents against the appellant were also exhibited as Ex.PW3/X3 to Ex.PW3/X5.

19. Further, when both Karuna and Moushmi reached the house and opened the same, it was the appellant alone with the dead body of the father lying in a pool of blood with blood scattered on the walls and the blood stained *Sotta* lying in the drawing room. Further the two of them i.e. Karuna (PW-3) and Moushmi had left the house at about 3 PM only when the appellant and the deceased were alone in the house and came back at about 5.15 PM. Further, when Karuna and Moushmi reached the house, door was locked from inside and only after repeated knocking, the appellant opened the door. The prosecution also relies upon the statement of the appellant, before the police reached at the house, when asked about the incident, wherein, he stated “*papa mummy ke paas jane ke liye keh rahe the, maine unko wahan bhejdiya*”. Though this extra judicial confession is a weak type of evidence and conviction cannot be solely based on this evidence, however, certainly, it is an additional link in the chain of circumstances.

20. Prosecution has also proved that the weapon of offence i.e. *sotta* was recovered from the spot which was stained with the blood of the deceased and as per the opinion of the post-mortem Doctor, injuries on the deceased could have been caused by the said weapon produced. Also, as per the FSL report, the *sotta* was found to be stained with the blood of the deceased being of ‘B’ group.

21. The prosecution having proved the foundational facts, the onus shifts on the appellant under Section 106 of the Indian Evidence Act to explain as how the death of the deceased took place when the appellant and the deceased were the only two persons in the house because the said fact is in

the special knowledge of the appellant. Hon'ble Supreme Court in the decision reported as (2006) 10 SCC 681 Trimukh Maroti Kirkan Vs. State of Maharashtra held as under:

“22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In Nika Ram v. State of H.P. [(1972) 2 SCC 80:1972 SCC (Cri) 635: AIR 1972 SC 2077] it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with “khukhri” and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In Ganeshlal v. State of Maharashtra [(1992) 3 SCC 106: 1993 SCC (Cri) 435] the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 CrPC. The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In State of U.P. v. Dr. Ravindra Prakash Mittal [(1992) 3 SCC 300:1992 SCC (Cri) 642 : AIR 1992 SC 2045] the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that the wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the

chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC. In State of T.N. v. Rajendran [(1999) 8 SCC 679 : 2000 SCC (Cri) 40] the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime”.

[Emphasis supplied]

22. Further in the decision reported as 2022 SCC OnLine SC 673 Sabitri Samantaray Vs. State of Odisha and Bidyadhar Praharaj Vs. State of Odisha Hon’ble Supreme Court emphasized that before shifting the burden under Section 106 of Evidence Act, the prosecution is required to prove the foundational facts. It was held:

“18. Section 106 of the Evidence Act postulates that the burden of proving things which are within the special knowledge of an individual is on that individual. Although the Section in no way exonerates the prosecution from discharging its burden of proof beyond reasonable doubt, it merely prescribes that when an individual has done an act, with an intention other than that which the circumstances indicate, the onus of proving that specific intention falls onto the individual and not on the prosecution. If the accused had a different intention than the facts are specially within his knowledge which he must prove.

19. Thus, although Section 106 is in no way aimed at relieving the prosecution from its burden to establish the guilt of an accused, it applies to cases where chain of events has been

successfully established by the prosecution, from which a reasonable inference is made out against the accused. Moreover, in a case based on circumstantial evidence, whenever an incriminating question is posed to the accused and he or she either evades response, or offers a response which is not true, then such a response in itself becomes an additional link in the chain of events.

23. Though the appellant in his statement under Section 313 CrPC has taken a plea that he was not residing with his father at the time of incident and has been falsely implicated in the case, however, no evidence has been led to show that the appellant was residing away from his father. Since the appellant took the plea of alibi, onus was on him to prove this plea by preponderance of probability, on which, he utterly failed. In fact, no such suggestion has been given to the witnesses Karuna and Moushmi that the appellant was not residing at the house and was residing somewhere else.

24. In view of the discussion aforesaid, this Court finds no error in the impugned judgment of conviction and order on sentence.

25. Appeal is accordingly dismissed.

26. Copy of the judgment be sent to the Superintendent, Jail for updating the record and communicating to the appellant and be also uploaded on the website of this Court.

(MUKTA GUPTA)
JUDGE

(POONAM A. BAMBA)
JUDGE

MAY 08, 2023/akb