

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

% *Judgment reserved on :16.09.2015*
Judgment delivered on :.23.09.2015.

+ CRL.A. 714/2013

MUKESH @ BANTI

..... Appellant

Through Mr.Sultan Mohd.Khan and
Ms.Taiba Khan, Advocate.

versus

STATE OF NCT OF DELHI

..... Respondent

Through Ms.Meenakshi Dahiya, APP

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order on sentence dated 20.12.2012 and 21.12.2012 wherein the appellant stands convicted under Section 307 of the IPC. He has been sentenced to undergo RI for a period of 5 years and to pay a fine of Rs.5,000/- and in default of payment of fine, to undergo SI for 6 months.

2 The nominal roll of the appellant reflects that as on date, he has

completed incarceration of almost 3½ years which includes the remissions awarded to him.

3 The version of the prosecution is that on 03.04.2010 at about 09:40 pm when the victim/complainant (PW-3) was sleeping in her room along with her adult daughter (PW-2), the appellant (husband) came in her room; he made a contraption out of a black chunni lying there after putting it around the neck of the victim and tightened the noose; he then beat her and gave her kick blows; after which she became unconscious. PW-2 informed her maternal uncle (PW-1) and the police about the above incident. The victim was moved to Safdarjung Hospital. Her statement (Ex.PW-3/A) was recorded. FIR was registered.

4 The prosecution in support of its case has examined 8 witnesses of which the complainant was examined as PW-3. Complainant's daughter was examined as PW-2. Her brother was examined as PW-1. The doctor who had examined PW-3 was Dr. Pooja Singhal (PW-6). She had identified the signatures of Dr. Sanjay Singh on the MLC (Ex.PW-6/A). The investigation was marked to ASI Mahesh Singh (PW-8) who along with SI Vinod (PW-5) had reached the spot. The victim was found moved to the hospital and it was in the hospital that

CrI. Appeal No.714/2013 Page 2 of 16

the statement of the victim was recorded, pursuant to which the criminal law was set into motion and challan was thereafter, filed.

5 On the basis of the aforementioned evidence collected by the prosecution, both oral and documentary, the accused was convicted and sentenced as aforementioned.

6 On behalf of the appellant, learned counsel Mr.Sulaiman Mohd. Khan, submits that the version of the prosecution is full of inherent contradictions; the incident had not taken place in the matrimonial home as has been stated by the prosecution. PW-3 and her daughter (PW-2) were staying in the parental home of PW-3, at Jhajjar, Haryana and the incident, if any, was an attempt to commit suicide by PW-3. This case has been set up to falsely implicate the appellant and that is why there is an inordinate delay in lodging of the FIR which was lodged on the following morning of the incident at 11:30 am i.e. on 04.04.2010, when infact the incident as per the version of the prosecution, had occurred at 09:40 PM on the night of 03.04.2010. There is no explanation for this inordinate delay. The MLC (Ex.PW-6/A) of PW-3 also reflects that the victim was fit for statement at the time when she was taken to the hospital which was at 03:15 am, for which again there is no explanation,

even assuming that PW-1 reached Delhi from Jhajjar at midnight, the distance between Rangpuri (where PW-3 was allegedly staying) is only about 15 minutes from Safdarjung Hospital and this is again an unjustifiable delay in getting the victim examined and thereby throws doubt on the veracity of the version of the prosecution. The whole case is concocted. He further stated that this was in an attempt to grab the property of the appellant.

7 Needless to state that the prosecution has refuted these allegations.

8 Arguments have been heard. Record has been perused.

9 PW-3 has deposited that she and the appellant had been married for about 17 years, out of which she was happy in the matrimonial home for only about one year. Their daughter Bhawana (PW-2) was born out from their wedlock. Thereafter, the accused started misbehaving and torturing the victim. A divorce case was filed by the appellant 8-9 years ago i.e. sometime in 2001-2002. The Court had passed an order for return of PW-3 back to their matrimonial home. She along with her daughter joined the company of the appellant. This was on 22.01.2010.

PW-3 remained in the matrimonial home for 40 days. She along with

her daughter, thereafter, returned to the house of her parents. Her husband did not come to take her back. PW-1 had dropped her to the matrimonial home on 02.04.2010. Her daughter had also come back along with her. On the following day i.e. on 03.04.2010 when she was lying in her room at 09:40 PM, the appellant started abusing and beating her. She sustained injuries on her forehead, right hand and left leg. He took a chunni in his hand and told her that 'phir tu mere gale aan pari. Aaj tujhe nahi chhorooga aur tera kaam tamam kar doonga take mujhe bhi chhutkara mile.' He attempted to strangle her with the chunni. He gave her kick blows. She became unconscious and regained it after two hours. The police was then informed. Her statement (Ex.PW-3/A) was recorded.

10 PW-3 was subjected to a lengthy cross-examination. She admitted that she had first left the house of the appellant when her daughter was 2½ months old. She lived in her parents' house for 2-3 years. She admitted that pursuant to the order of the Court on 22.01.2010, she rejoined her husband in the matrimonial home along with her daughter where she stayed for 40 days. Her brother (PW-1) dropped her back to the matrimonial home on 02.04.2010. She admitted that her elder sister

has been married to the brother of the appellant. She denied the suggestion that this is a false case and has been registered against the appellant in connivance with her brother or that no such incident had taken place or that she had attempted to commit suicide or she is deposing falsely.

11 PW-2 is the adult daughter of the victim. She was an eyewitness to the incident. She had toed the line of her mother and had deposed that on 03.04.2010 at about 09:40 PM while she was sleeping in the room, her father came there. He started abusing her mother and after giving her fists blows, he stated that ‘phir tu mere gale aan pari. Aaj tujhe nahi chhorooga aur tera kaam tamam kar doonga take mujhe bhi chhutkara mile.’. He attempted to strangle her mother with a black and white printed chunni; she raised an alarm but nobody came to save her. She rang up her maternal uncle (PW-1). Police was also informed on 100 number. Her maternal uncle reached their house at around midnight. Her mother had become semi-conscious by that time. PW-2 and her maternal uncle took her mother to the Safdarjung Hospital where she was examined. Her statement was recorded.

12 PW-2 was subjected to a lengthy cross-examination. She admitted

that she had raised alarm but nobody came from the neighbourhood. Her maternal uncle had reached the spot after 2- ½ hours of the incident. She rang up the police on 100 number. Police personnel did not come. Her mother had regained consciousness at 11:30 PM on her own and she did not do anything during that period. She denied the suggestion that the incident took place at her nana's house and that she was giving the statement against her father under the influence of PW-1. She also denied the suggestion that her mother had attempted to commit suicide at her parents' house and later on, this incident was planted upon the appellant with a malafide intention. She denied the suggestion that she is deposing falsely.

13 The maternal uncle of PW-2 was examined as PW-1. He is the brother of PW-3. He is a resident of District Jhajjar, Haryana. He has deposed that he is a farmer by profession. On 03.04.2010 at about 10:00 pm, he received a telephonic call from his niece (PW-2). She told him that her father had tried to kill her mother by strangulation. He reached his sister's house at midnight. He found his sister in a semi-conscious condition and she could not speak; her throat was swollen and there were injuries on her face, right hand and left leg. She was taken to

Safdarjung Hospital where she was admitted. His statement was recorded by the police.

14 In his cross-examination, he admitted that his statement was recorded on 04.04.2010. His niece was also present. He admitted that his younger sister was married to the brother of the appellant. He admitted that his brother-in-law and his sister had a matrimonial dispute and his brother-in-law used to beat his sister after consuming liquor. He admitted that the appellant had filed a divorce case which was later on withdrawn. On 02.04.2010, he had taken his sister along with PW-2 to her matrimonial home where he had dropped them. His sister had been married to the appellant for nearly 16 years from the date of the incident. He denied the suggestion that he along with his sister had conspired to grab the property of the appellant and to pressurize him to transfer his property in the name of PW-3. He also denied the suggestion that no such incident had taken place or that his sister had falsely implicated the appellant. He also denied the suggestion that his sister had attempted to commit suicide in her parental home or this incident had been planted upon the appellant with a malafide intention.

15 PW-3, PW-2 and PW-1 are the star witnesses of the prosecution.

Their versions are cogent and coherent. They have all deposed that on the fateful day i.e. on 03.04.2010 at about 09:40 PM, the incident had occurred and the appellant had attempted to strangle PW-3 of which PW-2 was the witness.

16 It is undisputed that there was an acrimony between the appellant and PW-3 and so much so, a divorce petition had also been filed by the appellant which was later on withdrawn and vide order dated 22.01.2010, the Court had directed that the parties should again try to live together and pursuant to that order, PW-3 and PW-2 had joined the appellant in their matrimonial home. Up to this point, the factual position stands admitted even by the appellant. PW-3's version corroborated by PW-2 is thereafter to the effect that PW-3 along with PW-2 lived with the appellant in the matrimonial home for 40 days after 22.01.2010 but thereafter she again came back to the parents' house. Her husband (the appellant) did not come to take her back. PW-1 dropped her in her matrimonial home along with her daughter on 02.04.2010. The incident had occurred on the following day i.e. on 03.04.2010.

17 The submission of the learned public prosecutor is that frustration had built up in the mind of the appellant as he had already filed a

Crl. Appeal No.714/2013 Page 9 of 16

divorce petition against PW-3, back in the year 2001 and despite having taken the above step, he could not succeed and by an order of the Court, he was again pressurized to take PW-3 in the matrimonial home. This was a grudge and grievance which was floating in the mind of the appellant. The fact that the appellant and PW-3 had a negative relationship has been admitted by PW-3 who has stated that when her daughter was as young as 2½ months, she had left her matrimonial home and had gone to live with her parents. This appears to be a clear case where the frustration which had been built up in the mind of the appellant was vented when he attacked PW-3 on 03.04.2010. The manner in which the incident has been described by PW-3 has been fully corroborated by PW-2 and also the version of PW-1 persuades this Court to hold that this in fact was the manner in which the incident had occurred.

18 The submission of the learned counsel for the appellant that there was a delay in lodging the FIR has been justifiably explained and answered by the prosecution. PW-3 and PW-2 have both deposed that the incident had occurred on 03.04.2010 at 09:40 PM. After the attack on PW-3, she became unconscious. PW-2 informed her maternal uncle

(PW-1) who was a resident of Jhajjar, Haryana. PW-1 has admitted that it took 2- ½ hours to reach Delhi from Jhajjar. Even presuming that PW-1 left his home at about 10:00 PM, he would have reached Delhi past midnight. This is also his version. This is further borne out from the first DD recorded at 12:27 AM (DD No. 4-A) which was the information about the quarrel having taken place at Rang Puri, near Raddison Hotel. The fact that the incident had occurred at 12:27 AM (recorded in DD No. 4-A) stands established. It was probably at this time that the information was received in the local police station. This is also the version of the Investigating Officer ASI (Mahesh Singh-PW-8) who had stated that on the night of 04.04.2010 at 12:27 AM, he received DD No. 4-A pertaining to a quarrel in the said area. This DD was proved as Ex.PW-8/A. The Investigating Officer on reaching the spot had found the victim moved to the Safdarjung Hospital. The MLC of the victim (Ex.PW-6/A) evidences this fact. Ex.PW-6/A evidenced that the patient although conscious was suffering from stiffness in the neck; she had difficulty in breathing; there was injury on her left front leg. There was a strangulation mark of 12 cms X 2 cms around her neck; swelling and tenderness on the forehead and also tenderness on her face and around

CrI. Appeal No.714/2013

her eyes. These injuries noted in Ex.PW-6/A match the version of PW-2 and PW-1 who, in their oral testimonies described the injuries suffered by PW-3 after the attack by the appellant. The injuries were opined to be dangerous. The MLC further shows that the patient had been brought by her brother with a history of strangulation by her husband which took place at about 09:45 PM. The MLC notes the time as 03:15 AM.

19 The fact that a quarrel had taken place at Rang Puri at 12:27 AM (recorded in Ex.PW-8/A) stands established. PW-1 had reached Rang Puri from Jhajjar past midnight. His sister was semi-conscious at that time. He along with PW-2 had taken her to the Safdarjung Hospital. This was at 03:15 AM. Even presuming that Rang Puri is at a distance of half an hour from Safdarjung Hospital (approximately 20 kms) does not advance the version of the appellant that the fabricated version has been concocted in this intervening period. There was hardly any time. There was probably a distance of one hour which could be attributed to the fact that since admittedly PW-3 had regained consciousness in the house itself, the family was yet debating as to whether PW-3 should be taken immediately to the hospital or they could probably wait for her condition to improve on its own. Although this has not come in the

CrI. Appeal No.714/2013 Page 12 of 16

evidence as no question on this aspect was put to any of the witnesses, but this appears to be the only plausible explanation. The submission of the learned counsel for the appellant that the incident had occurred in the matrimonial home of the appellant is wholly negated by the fact that apart from the coherent and cogent versions of PW-1, PW-2 and PW-3 on this score, there was absolutely no reason for PW-3 to have cooked up a story (but for the fact that it was true) that she had returned to her matrimonial home after 40 days on 22.01.2010. If her version was concocted, she had the order of 22.01.2010 in her hand to advance her case that after the order of the Court, she was in the matrimonial home where the incident had occurred. There was no record with the appellant to show that PW-3 had returned back to her matrimonial home. It is only the version of PW-3 and PW-2 on this count. PW-3 has stated that after the order of the Court dated 22.01.2010 when she was asked to join the company of her husband, she stayed with him for 40 days i.e. up to the end of February but thereafter returned to her parental home. Her husband did not come to pick her back. Her brother, thereafter, dropped her on 02.04.2010. If the victim was setting up a false version, she did not necessarily have to state that she had stayed with the appellant only

for 40 days; armed with the order of 22.01.2010, she could well have stated that she continued to stay in the matrimonial home when the incident had occurred. This also persuades this Court to hold that the victim was speaking the truth.

20 The defence of the appellant is wholly confused. At one point of time, the learned defence counsel has given the suggestion to the prosecution witnesses (PW-1, PW-2 & PW-3) that the appellant has been falsely implicated as the victim wanted to grab the property of the appellant; this has come in the suggestion given to PW-1 and PW-2 but not to PW-3; how and in what manner they could have grabbed the property of the appellant if he was put to jail when admittedly the property stood in his name is a question to which there is no answer. His second line of defence is that it was an act of suicide which has been committed by the victim at her parental home. This defence has already been set at naught in view of the discussion supra. PW-8 who was the Investigating Officer had reached the spot along with PW-5 but as noted supra, he had found the victim moved to the Safdarjung Hospital. Although the victim was fit for statement at 03:15 AM itself but he did not chose to record her statement because of the psychological and

CrI. Appeal No.714/2013 Page 14 of 16

emotional trauma which she was undergoing. This has been disclosed by PW-8 and PW-5 and has been noted by the Trial Judge in the right perspective. Her statement was recorded on the following day at 11.00 AM pursuant to which the FIR was registered. Delay, if any, in lodging the FIR is wholly explained.

21 The motive of the crime as already discussed was the frustration which had been brewing in the mind of the appellant which was finally vented out on the date of the incident. The injuries suffered by the victim were dangerous. The appellant had, with an intention, attempted to commit an act knowing fully well that this could well have led to the death of the victim. His conviction under Section 307 of the IPC is well founded and calls for no interference.

22 On the aspect of sentence, the appellant has already undergone incarceration of 3- ½ years. This was a marriage in which the victim was the sufferer but the apathy qua the appellant also cannot be totally ignored. He could never enjoy a matrimonial life or the growing up of his child. This was probably for the reason attributable to himself alone but yet noting this factual matrix and also the fact that he has suffered a substantive part of his sentence and his jail conduct has been

satisfactory; he is a first offender; this Court is inclined to modify his sentence. The sentence of RI 5 years is accordingly reduced to RI 4 years. No modification is called for in the fine which has been imposed.

23 With these directions, appeal stands disposed of.

24 A copy of this order be sent to the Jail Superintendent for intimation to the appellant.

INDERMEET KAUR, J

SEPTEMBER 23, 2015

A