

\$~ R-41-A (Part-A)

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

Date of decision: 01st December, 2015

+ **CRIMINAL APPEAL No. 725/2012**

KAILASH Appellant

Through: Mr. Ajay Verma, Advocate.

Versus

STATE Respondent

Through: Ms. Aashaa Tiwari, APP with
Inspector Tulsi Ram, P.S.
Najafgarh.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.K.GAUBA

R.K.GAUBA, J. (ORAL):

1. By judgment dated 04.01.2011, the appellant was held guilty, as charged, for the offence of murder of his wife Saroj in the early morning hours on 09.09.2008 in the premises described as E-133, Indra Park, Najafgarh, New Delhi.

2. By order dated 18.01.2011, the trial court awarded imprisonment for life with fine of Rs.10,000/-, also directing that in the event of non-payment of fine, the appellant would undergo simple imprisonment for four months. The benefit of set off under Section 428 of the Code of Criminal Procedure, 1973 ("Cr.P.C") was accorded.

3. The case of the prosecution, briefly put, was that the appellant was married to Saroj (hereinafter referred to as “the victim” or “the deceased”) about three years prior to the incident in question. She had given birth to a girl child, named Ruchi, who was about two years old when Saroj died. The appellant and the deceased with the infant daughter were living as tenants in the aforementioned property which was owned by Ram Chander (PW1). It is the case of the prosecution that Munni Devi @ Geeta (PW11), mother of the deceased, had also taken up residence in a nearby house, in the same locality, in the property owned by Rajesh (PW2). It has come in the evidence of Munni Devi @ Geeta (PW11) that Saroj and two of her siblings were born out of her wedlock with one Laxman. Munni Devi @ Geeta (PW11) had fallen apart from Laxman and later started living with one Mahesh @ Munna. Mahesh @ Munna would also reside with her in the tenanted premises, owned by Rajesh (PW2).

4. The prosecution alleged that on the early morning of 09.09.2008, the landlord (PW1) saw the appellant leaving the premises, carrying the child in his arms. On being questioned, the appellant is stated to have told him that he was going to the house of his in-laws, which would mean the house of Munni Devi @ Geeta (PW11). Sometime around 01:00 PM, the landlord (PW1) had seen blood coming out of the tenanted room. He is stated to have peeped inside the room after moving the curtain on the door aside to see Saroj lying dead on the floor in a pool of blood with a large stone kept on her head. This information was conveyed through police control room (“PCR”) to the police station, where it came to be logged as DD no.35-A (Ex.PW15/A) at 02:25 PM. We may add that the PCR form (Ex.PW14/A) was also proved which

confirms that intimation about the woman having been found lying dead in the aforementioned premises and circumstances was received through telephonic call made at 14:16:49 hours. The matter arising out of DD no.35-A (Ex.PW15/A) was made over by the police station to ASI Hari Singh (PW18). The first information report ("FIR") (Ex.PW12/A), which came to be registered at 1720 hours on 09.09.2008, was founded on the *rukka* (Ex.PW18/A) sent by ASI Hari Singh at 1700 hours from the scene of crime. The FIR, thus registered, would indicate that on arrival at the place, PW18 met PW1, owner/landlord of the premises, who pointed towards the dead body of Saroj lying inside. The description of the scene indicated in the *rukka* (Ex.PW18/A) is confirmed by the photographs (Ex.PW8/A-1 to Ex.PW8/A-10) which were developed by Ct. Arun Kumar (PW8) who was called in, as part of the crime team, during the initial investigative steps. The deceased was lying on a sheet on the floor. Her head bore crush injuries which had resulted in loss of blood. There was a wooden plank (broken) also found lying nearby. The blood had spilled out from under the door of the room.

5. The landlord (PW1) had informed ASI Hari Singh (PW18), even at the time of the registration of the FIR that the premises had been taken on rent by the appellant who was living there with his wife (the deceased) and the infant child. After preliminary steps, the case was taken over for further investigation by Inspector Raghu Raj Khatana (PW19), the Inspector (Investigation) posted in the police station. It has come in his evidence that despite his efforts, he was unable to trace the appellant. The mother of the deceased (PW11), was also found missing from her tenanted premises. In fact, others living with her, which would

include Mahesh @ Munna, were also not available. It is the position taken by Munni Devi @ Geeta (PW11) during the investigation and trial that the appellant had come to her in the early morning hours of 09.09.2008 to hand over the infant daughter Ruchi and had, thereafter, left the place. We may mention here that it is also her claim that at the said stage of handing over of infant child, the appellant had made a confessional statement to her that he had killed Saroj. Munni Devi @ Geeta (PW11) would add that after the child had been handed over, she had visited the tenanted premises where her daughter Saroj was living and found her lying dead in a pool of blood. She stated that she had thereafter left with the rest of the family, and the infant daughter of Saroj, for her native place in Madhya Pradesh. She would return to Delhi only around 21.09.2008.

6. During investigation, the dead body was sent to mortuary of Rao Tula Ram Memorial hospital, Jaffarpur, Najafgarh, New Delhi and preserved for the next of kin to come forward for it to be formally identified. The report of investigation under Section 173 Cr.P.C would show that Ram Swarup (PW9) and Kalawati (PW10), the elder brother of the father (*taau*) of the deceased and his wife (*taai*) were contacted in their native place i.e. village-Salarpur, P.S. Kerara, District Shivpuri, Madhya Pradesh and called for the purpose to Delhi on 13.09.2008.

7. After PW9 and PW10 had identified the dead body, it was subjected to post-mortem examination by Dr. Parvinder Singh (PW4). The autopsy doctor proved his report (Ex.PW4/A) which noted the following twelve ante-mortem injuries on the dead body :-

- (i) *Lacerated wound. 3x2 cms, present over right side of forehead;*
- (ii) *Incised wound, scalp deep, 16 x 0.5 cms, present over left frontotemporoparietal region of skull, sickle shaped with flap formation present;*
- (iii) *Lacerated wound 3 x 1.5 cms present over outer aspect, right eye;*
- (iv) *Bruise 10 x 8 cms present over right side of forehead and upper part of face;*
- (v) *Extravasation of blood present in gums;*
- (vi) *Bruising of inner aspect of upper and lower lips (diffuse) present;*
- (vii) *Bruise 1 x 1 cm present over right side of face near right ala of nose;*
- (viii) *Abraded contusion .5 x .5 cm present over the left ala of nose;*
- (ix) *Bruise 2 x 2 cms present over the left side of face near left ala of nose;*
- (x) *Bruise 1 x 1 cm present over right ear pinna;*
- (xi) *Lacerated wound 4 x 2 cms present over front of right forearm, muscle deep;*
- (xii) *Multiple contusions present in an area of 4 x 3.5 cms over right shoulder.*

8. The internal examination had revealed effusion of blood present under the scalp over right fronto-temporoparietal region of skull, fracture of right temporal and parietal bones. In the opinion of the autopsy doctor, the death had occurred due to asphyxia following ante-mortem smothering alongwith cranio-cerebral damage (head injury), consequent to the above described multiple injuries. The injury no.2 was found to be caused by sharp-edged weapon and the remaining by hard

blunt force impact. The head injury, in the opinion of the autopsy doctor, was sufficient to cause death in ordinary course of nature. As per autopsy report, death had occurred 10-12 hours prior to preservation of the dead body in the mortuary. This would coincide with the early morning hours of 09.09.2008.

9. The investigation report would show that the appellant was arrested on 21.09.2008 (vide arrest memo Ex.PW3/A) after personal search (Ex.PW3/B).

10. The evidence that has been led by the prosecution establishes beyond the pale of any doubt or controversy that Saroj had suffered homicidal death in the tenanted premises, taken by her husband (i.e. appellant) in the property of Ram Chander (PW1), in the early morning hours of 09.09.2008. The extent of injuries, particularly the crush injury suffered on the head, leaves no doubt as to the fact that the assailant intended to bring about death. A large piece of stone has been used alongwith some sharp object (which could not be found), besides one wooden plank also employed in the assault.

11. The learned counsel arguing on behalf of the appellant fairly conceded that the fact that death of Saroj was a case of murder is agiven. His only argument is that the appellant was innocent and had been wrongly charged with the crime on the basis of unreliable evidence, primarily the testimonies of the landlord (PW1) and the mother-in-law (PW11).

12. Before taking up the evidence in nature of “last seen”, we must observe that the evidence of Munni Devi @ Geeta (PW11) about extra-

judicial confession on the part of the appellant is not very convincing. Though her testimony does show that the appellant had visited her house in the early morning of 09.09.2008, the purpose of the visit was mainly to hand over child (Ruchi), as in course of a routine practice. If indeed there was a confession made about his complicity in the crime, Munni Devi @ Geeta (PW11) was bound to immediately raise hue and cry and bring the fact of involvement of her son-in-law (appellant) to the notice of the authorities. Her conduct, in the facts and circumstances, of leaving Delhi with rest of the family and the child of her deceased daughter, though having learnt about the murder, is rather curious. The fact remains that she did not come forward with the theory of extra-judicial confession till 21.09.2008, full twelve days after the occurrence.

13. For the foregoing reasons, while we keep aside the evidence of Munni Devi @ Geeta (PW11) about the extra-judicial confession, we find that there is no reason as to why her word about the visit of the appellant to hand over the child to her in morning of 09.09.2008, and of the landlord (PW1) about he having earlier seen the appellant going away from the tenanted premises with the child, should be disbelieved. It be noted that no effort was made during the statements of PW1 or PW11 to discredit their version about the said conduct of the appellant leaving the tenanted premises with the child in the morning of 09.09.2008, handing it over immediately thereafter to the mother-in-law (PW11) at her house located nearby, and then becoming unavailable.

14. We may add here that at the stage of his statement under Section 313 Cr.P.C. when confronted with prosecution evidence, the appellant responded to question nos.1 and 2 as under:-

“Q. No.1 It is in evidence against you that you had started living as tenant with your wife Saroj (deceased) and one two years old daughter on the ground floor of house no.E-131, Indra Park, E-Block, Near Durga Mandir, Nangli Sakrawati, Najafgarh, New Delhi in September 2008. What do you have to say?”

Ans. It is incorrect. We were staying in the house of Mahesh @ Munna.”

“Q. No.2. It is in evidence against you that on the night of 08.09.2008 your wife Saroj (deceased) went to house of her mother namely Munni Devi @ Geeta in the same locality. She was crying at that time and she complained to her mother that you were suspecting her of having illicit relationship with Mahesh @ Munna, second husband of Munni Devi @ Geeta. What do you have to say?”

Ans. On that night Saroj had gone from my house to house of her mother Munni Devi which was at some distance from my house but I do not know about her conversation with her mother. Saroj was having illicit relationship with Mahesh @ Munna.”

15. We may also note that the appellant explained his defence (in answer to question no.28) in the following words:-

“ I do not know anything. I alongwith Saroj and Ruchi had come to Delhi on request of my mother-in-law Munni Devi. After living for 5-6 days in Delhi, I had gone to my native village. I do not know how did my wife die. I do not know as to how did I come to know about her murder. I had seen Saroj in compromising condition with Munna for three days. Thereafter they threatened me to go away otherwise they would kill me. I therefore went to my village.”

16. Clearly, the answers to question nos.1 and 2 are contradictory to each other. Having first denied that he was living in the tenanted premises owned by PW1 and having claimed that he with the family were actually staying in the house of Mahesh @ Munna (i.e. the person with whom Munni Devi @ Geeta (PW11) was living at that time) in

answer to the very next question he claimed that Saroj (the deceased) had gone from his house to that of her mother Munni Devi @ Geeta (PW11) which was located at some distance. This answer itself shows that the appellant acknowledged that the house in which he was living with his family was at some distance away from the house of his mother-in-law (PW11). The first answer was palpably false. The dead body of his wife was, thus, found in the house which he had taken over on rent from PW1 whose word he has not even attempted to discredit remotely.

17. As would be noticed from his answers to question nos.2 and 28, extracted above, the appellant attributed illicit relationship between his wife (Saroj) and Mahesh @ Munna, the person with whom Saroj's mother (PW11) was living after separation from her husband. This suggestion is unfounded. No evidence suggests the said assertion. In the facts and circumstances, the theory of illicit relationship between Saroj and Mahesh @ Munna must be rejected and trashed. In fact, the assertion would show and indicate motive. The appellant was overly suspicious.

18. The facts and circumstances which have been clearly established may be summarized as under:-

- (i) The appellant was married to the deceased (Saroj) more than three years prior to her death;
- (ii) Saroj (the deceased) had given birth to a girl child (Ruchi) about two years prior to 09.09.2008;
- (iii) The appellant and the deceased were working as labourers on daily wages and would leave their infant daughter with the grandmother (PW11) of the child in her house located in the vicinity;

(iv) On 09.09.2008, in the early morning hours, the appellant was seen by the landlord (PW1) going away with the infant child and on being asked, he told that he was going to hand over the child to its grandmother, as per routine;

(v) Immediately after the appellant had handed over the infant daughter to her grandmother (PW11), he left for undisclosed place;

(vi) At about 01:00 PM on same day (09.09.2008), PW1 saw blood spilling out of the door of the tenanted room and on checking, Saroj was found dead with crush head injuries, the death being homicidal having occurred in the morning; and,

(vii) The appellant remained unavailable till he could be traced and arrested on 21.09.2008.

19. Thus, the offence in question was committed in the room in occupation of the appellant. He was present at that time. Appellant's conduct, post the occurrence, was abnormal and proof of his involvement. This apart, when the facts proved were put to the appellant, he gave contradictory and false answers. These answers are incriminating. The entire evidence when examined completes the chain of circumstances necessary to connect the person concerned with the crime committed [*Rameshbhai Chandubhai Rathod vs. State of Gujarat*, (2009) 5 SCC 740; *Shivaji @ Dadya Shankar Alhat vs. State of Maharashtra*, (2008) 15 SCC 269; *Mohan Anna Chavan vs. State of Maharashtra*, (2008) 7 SCC 269; *State of Rajasthan vs. Kashi Ram*, (2006) 12 SCC 254; *State of Andhra Pradesh vs. Kanda Gopaludu*, (2005) 13 SCC 116; *Joseph & Paulo vs. State of Kerala*, (2000) 5 SCC 197 and *State of Maharashtra vs. Suresh*, (2000) 1 SCC 471]. The false answers given by the appellant in his statement under Section 313 Cr.P.C, as noted above, provide a supporting link in the chain of circumstances, if there was any missing link for it to be required to be

filled in. We may rather observe that the false answers in the case at hand reinforce the impression gained from the proved facts as to the appellant being the perpetrator.

20. In our judgment, the facts and circumstances, which have been brought home beyond the pale of all doubts, provide and constitute a complete chain, the only hypothesis flowing wherefrom is that it was the appellant who had committed the murder of his wife Saroj in the tenanted premises.

21. For the foregoing reasons, we find no merit in the appeal. The impugned judgment does not suffer from any error, illegality or irregularity. The learned trial court has appropriately viewed the evidence led by the prosecution and reached correct conclusions which we hereby affirm.

22. The appeal is dismissed. The appellant be informed of the result through Superintendent, Jail, and a copy of this judgment be delivered to him.

(R.K.GAUBA)
JUDGE

(SANJIV KHANNA)
JUDGE

DECEMBER 01, 2015
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