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

Date of Decision: 22nd July, 2016

+ **Crl. A.No.445/2000**

VARINDER MANN@ PAPPU APPELLANT

Through: Mr.M.L.Yadav, Adv.

versus

STATE NCT OF DELHI RESPONDENT

Through: Ms. Aashaa Tiwari, APP for the
State

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K. GAUBA, J (ORAL)

1. This appeal assails the judgment and order of court of sessions convicting the appellant for murder of his wife Anita and sentencing him for imprisonment for life with fine.

2. Anita, daughter of Dewan Singh (PW-17) and sister of Devender (PW-16), both resident of Sonipat, was concededly married to appellant in 1989. Both were living together in a house in village Prahaladpur within the jurisdiction of police station Samaipur Badli and out of their cohabitation two children had taken birth, they being aged about 4 years and 2½ years respectively on 7th April, 1998. According to the prosecution case, Anita was found in injured condition, lying on a cot within the four walls of the house in which she was living with her husband, at about 8:00-

8:30 AM by Parma Nand (PW-1), a building material contractor who had gone there in connection with some payment expected for the goods supplied by him sometime in the past. It is admitted case of the prosecution that construction work was going on in the said property and further that at the time of discovery of Anita in an injured state by PW-1, the appellant (the husband) was not present in the house. By the time the family of the woman including her *devrani* Pushpa (PW-6), wife of Narinder Singh (PW-8), who is younger brother of the appellant, was informed, and by the time medical help could be arranged, Anita succumbed to the injuries. On the basis of case registered on the statement of Devender Khatri (PW-16), as per the *rukka* (Ex.PW-16/A), the police investigated the matter assuming it to be a case of murder. On conclusion of the investigation, in the course of which, amongst others, the dead body of Anita was subjected to post-mortem examination by Dr. K.Goel (PW-9) in the mortuary of Subzi Mandi, Delhi, a charge-sheet was laid in the court seeking prosecution of the appellant on the charge that on the night of 6-7th April, 1998, in the aforementioned house in village Prahladpur, he had committed the murder of Anita by manual strangulation having subjected her to physical assault, *inter alia*, with the help of a broom (Ex.P-2) and a wooden stick (Ex.P-1).

3. The trial before the court of sessions on the charge under Section 302 of Indian Penal Code 1860 (IPC), framed on 2nd November, 1998, resulted in evidence of nineteen witnesses being recorded, the prime ones whereof are Parma Nand (PW-1), the contractor who had discovered the victim for the first time in injured condition; Pushpa (PW-6), the wife of

the brother of the appellant; Dhanpati (PW-7), mother of the appellant; Devender (PW-16) the brother of the deceased; and Dewan Singh (PW-17), father of the deceased. There is one more public witness examined Mohender Singh (PW-18), an acquaintance. But his testimony is not of much consequence except for confirming that the deceased had been found in an injured condition in her matrimonial home.

4. On evaluation of the evidence led before the court, having regard to the statement of the appellant under Section 313 Code of Criminal Procedure, 1973 (Cr.P.C.), wherein the appellant denied any complicity in the acts of commission resulting in the death of Anita, the learned trial judge by his judgment dated 19th May, 2000 held the appellant guilty and thus convicted him on the charge, as framed, for the offence under Section 302 IPC, and by order dated 26th May, 2000, awarded sentence for imprisonment for life with fine of Rs.5000/-.

5. This appeal was filed by the appellant challenging the findings returned by the trial judge submitting that he has been falsely implicated. By order dated 26th July, 2005, the sentence was suspended and the appellant was enlarged on bail pending consideration of appeal.

6. We have heard Mr.M.L.Yadav, learned counsel for the appellant and Ms.Aashaa Tiwari, learned APP for the State and with their assistance gone through the trial court record.

7. The findings recorded by the trial judge are summarized in (para 36 of) the impugned judgment as under:-

“36. Having given my thoughtful consideration to the evidence before the Court, it is proved beyond any shadow of doubt that (a) the deceased Anita died homicidal death (b) that the

accused had a motive to kill his house (c) that the accused had a domain, namely access to the deceased in the privacy of his house in the night intervening 6/7.4.98 (d) that the antemortem injuries found on the person of the deceased and manual throttling of the deceased which became the cause of her death were the handi-work of the accused and no other person in the given circumstances (e) that the cause of death of the deceased is proved to be on account of the aforesaid acts of the accused and no one else (f) the accused is proved to have the intention to kill his wife Anita and the manual pressures over the neck which has been found to be sufficient to cause the death in the ordinary course of nature is proved to have been the handi work of the accused and no other person and such manual pressures over the neck is not proved to be consistent with any possibility of suicide, namely, self inflicted”.

8. On perusal of the evidence on record, we find that there is no doubt that Anita had suffered grave injuries sometimes prior to 8:00-8:30 AM on 7th April, 1998 in the house at Village Prahladpur within the jurisdiction of police station Samaipur Badli where she had been living with her husband (the appellant) and the two children. The house is located close to the house of rest of the family which includes her mother-in-law Dhanpati (PW-7) who would live with her other sons, one of them, Narinder (PW-8), also being part of the extended family. It is in evidence that the family was on visiting terms and would frequently be at the house of each other. It has also come in evidence, without any contest, that Devender Khatri (PW-16), the younger brother of the deceased, who was a student aged about 21 years at the time of his deposition in the court (13th May, 1999), had lived with his sister (the deceased) and her family (including her husband and children) for quite sometime, about two years prior to the incident in question.

9. The post-mortem examination report (Ex.PW-9/A) duly proved by the autopsy doctor (PW-9) indicates that the deceased had been subjected to a very violent assault, the injuries suffered by her having been caused by a blunt weapon, the death having, however, occurred due to asphyxia upon manual strangulation. In the facts and circumstances, there cannot be the least doubt that the assailant(s) who had committed the said assault, and had inflicted the injuries including the one which proved fatal, intended to bring about her death. Thus, we agree with the conclusion reached by the learned trial judge that the death of Anita was a case of murder within the mischief of the penal provision contained in Section 302, IPC.

10. But, the crucial question is as to who had committed the murder. The trial judge held that the appellant had a motive to kill the deceased, had domain over her, had availed the access to the deceased in the privacy of the matrimonial home on the night intervening 6-7th April, 1998 and no other person could have been involved. On the basis of circumstantial evidence, he accepted the charge that the appellant had intention to kill his wife (Anita). On careful re-appraisal of the evidence, however, we find it difficult to uphold the above conclusions of the trial court.

11. The case for prosecution rested on circumstantial evidence. There is absolutely no evidence worth the name on the issue of the motive. A vague reference is made by Devender Khatri (PW-16) in his testimony that during the period he was living with the couple (the deceased and the appellant), the appellant used to “drink” (which we assume to be indulgence in alcohol) and used to engage in “*Marpeet*” (physical assault). Noticeably, he would not spell out as to who was at the receiving end of the physical assaults. Even if we were to assume that he was alluding to a

conduct wherein, the appellant would beat his wife, such conduct in the past, at the worst, reveals a propensity to become violent. This, by itself, cannot lead to the conclusion that the appellant had a motive, or intention, to kill his wife, who was mother of his two children, the second one of which must have been conceived around the time when her brother was also living under the same roof, assumably with the tacit approval of the former.

12. The evidence of PW-1, PW-6 and PW-8, read together, only shows that Anita was found in injured condition lying on the cot in her house and that, before medical help came, she died. The prosecution had claimed that Anita, before her death, had told Parma Nand (PW-1) that the injuries suffered by her had been caused by her husband. PW-1 refused to confirm this fact. Though he was declared hostile, and subjected to cross-examination, he stuck to his ground. There is no other evidence affirming such utterance on the part of the deceased as could be treated as her dying declaration. What needs particular notice is that in the evidence of Dhanpati (PW-7), the mother of the appellant, she is on record to state that she had spent the night of 6-7th April, 1998 at the house of the appellant and that she and the appellant both had left together at 6:00 AM on the morning of 7th April, 1998. This, coming from the witness for the prosecution, cannot be wished away. It rather shows that the deceased was not in the exclusive company of the appellant during the night when she is supposed to have been assaulted.

13. The learned trial court seems to have been influenced by the autopsy report that the death had occurred some 30 hours prior to the post-mortem examination which was conducted from 11:30 AM onwards on 8th April,

1998. The assessment by the autopsy doctor is in the realm of speculation. He could not have specifically pointed out the exact time of death. The ocular evidence produced by the prosecution rather contradicts the said assumption and shows that Anita was alive at least till sometime around 8:00/8:30 AM on 7th April, 1998, when PW-1 discovered her lying in an injured state.

14. For the forgoing reasons, and in the circumstances, we find it difficult to uphold the conclusions reached by the learned trial judge. The chain of circumstances proved is not complete and the facts proved do not conclusively demonstrate guilt of the appellant or exclude the possibility of his innocence. There being no other evidence to show his complicity, the appeal must succeed.

15. The judgment of the trial court, and the order on sentence, are thus set aside. The appellant is acquitted. The bail bonds are discharged. The appellant shall be informed by the registry about the result of this appeal by transmitting a copy of the judgment to him.

(R.K. GAUBA)
JUDGE

(GITA MITTAL)
JUDGE

July 22, 2016

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