

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

% *Date of Decision : February 16, 2016*

+ **CRL.A.536/2000**

JITENDER PAL SINGHAppellant
Represented by: Mr.Harsh Prabhakar, Advocate
(Amicus Curiae) with Mr.Anirudh
Tanwar and Mr.Aditya Vikram,
Advocates

versus

STATERespondent
Represented by: Mr.Varun Goswami, APP with
Insp.B.M.Bahuguna, PS Kirti
Nagar

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. The appellant before us seeks to assail the judgment of conviction dated July 28, 2000 and order on sentence dated August 02, 2000 passed by the learned Additional Sessions Judge-Delhi convicting him for the offence punishable under Section 302 IPC. The appellant has been awarded imprisonment for life and directed to pay fine of ₹1,000/-; in default of which he would be required to undergo further imprisonment for a period of fifteen days.

2. The finding of guilt has been returned by the learned Trial Court in wake of trinity of circumstances that we summarize at the outset.

(i) Existence of strained matrimonial relations between the appellant and his wife as emerging from the testimony of Harminder Pal Singh PW-1, Jaswant Singh PW-2, Harnam Singh PW-3, Rajender Kaur PW-8, Nisha Aggarwal PW-9, SI Jaswant Singh PW-10 and Raj Singh PW-11A.

(ii) Extra-Judicial confession made by the appellant to his son Harminder Pal Singh.

(iii) Failure of the appellant to substantiate his plea of alibi by leading evidence or suggest an alternate explanation of the incident.

3. The factual conspectus germane to the adjudication of the present appeal lies within a narrow compass and may be taken note of pithily before we advert to the rival submissions canvassed at the bar.

4. The marriage between the appellant - Jitender Pal Singh and Inderjeet Kaur was solemnized sometime in the year 1984/1985. Two male children. Harminder Pal Singh and Harsimran Pal Singh were born out of this wedlock. The married couple and the two children resided at E-257, Ramesh Nagar-New Delhi along with Manohar Lal - father of the appellant.

5. The evidence led by the prosecution evinces acrimonious matrimonial relations between the couple. The appellant remained unemployed in spells and would beat his wife; who was gainfully employed as a teacher in MCD school, to extract money from her to purchase liquor.

6. Two months before the unfortunate incident, on May 16, 1998 a PCR call was received at P.S Kirti Nagar intimating that a quarrel was taking place at E-257, Ramesh Nagar. In this regard D.D. No. 7A [Ex. PW 10/A] was recorded and in furtherance thereof, SI Jaswant Singh PW-10, along with Ct.Surender (not examined during trial) visited the

spot. As subsequently recorded in the Daily Diary Register vide D.D. No. 19A [Ex. PW10/B], the matter was compromised by the couple and not pursued further.

7. Perhaps the situation did not improve and on May 18, 1998 the wife of the appellant was compelled to address a complaint [Ex. PW 9/A] to Ms. Nisha Aggarwal PW-9 (Reconciliation-cum-Guidance Officer, Department of Social Welfare- Delhi Government) seeking protection from her husband alleging that she had been persistently torturing her. Consequently on the same day, Ms.Nisha Aggarwal promptly addressed a letter [Ex. PW 9/B] to the A.C.P. - Crime Against Women Cell, Tilak Nagar seeking intervention and protection for the wife of the appellant.

8. We now proceed to carefully capture the events as they transpired on the fateful day of incident i.e. July 28, 1998.

9. At 07:15 a.m. the two children, Harminder Pal Singh and his younger brother Harsimran Pal Singh (not examined during the course of investigation and trial) left residence to attend school. It may be apposite to notice that on the relevant date of incident Harminder Pal Singh was aged 12 years and a student of class VII whereas his younger brother- Harsimran Pal Singh was studying in class I.

10. According to the prosecution the children returned from school at 2:15 p.m. The appellant is stated to have opened the door of the house and upon entering the drawing room Harminder Pal Singh saw his mother lying on the floor. Harminder Pal Singh enquired from the appellant as to what had happened to his mother. The appellant took him to a separate room and revealed that a quarrel had taken place between them earlier during the day. The appellant confessed that in a fit of rage he had pressed the neck of the deceased that resulted in her death. Further, the appellant requested that if any person or the police enquired

about the incident, he should inform that the deceased had suffered a heart attack.

11. The police was brought into the picture only at 3:05 p.m. when DD No.33-B [Ex. PW 7/A] was recorded at P.S. Kirti Nagar, contents of which reveal that a telephonic information had been received from ASI Chander Bhan- PCR (not examined during the course of investigation and trial) that a quarrel was taking place at E-257, Ramesh Nagar.

12. Upon receipt of DD No.33-B, HC Ramesh Chand PW-4 along with staff reached the spot of occurrence at 3:15 p.m.

13. HC Ramesh Chand telephonically informed P.S. Kirti Nagar that a woman named Inderjeet Kaur was found lying dead at E-257, Ramesh Nagar and the said information was recorded vide D.D. No. 11A [Ex. PW 7/B] at 3:30 p.m.

14. In furtherance thereof, the S.H.O.- P.S. Kirti Nagar (not examined during the course of investigation and trial) along with the Additional S.H.O.- Insp.Kulbhushan PW-14 left for the spot in a government vehicle driven by HC Prem Singh (not examined during the course of investigation and trial).

15. At around 03:40/03:45 p.m., Insp.Kulbhushan along with other police personnel reached the spot of occurrence and found Inderjeet Kaur lying dead in the drawing room of the house.

16. In the meanwhile, Harminder Pal Singh telephonically informed Harnam Singh PW-3 (maternal uncle of the deceased) about the incident. Thereupon, Harnam Singh rushed to house of Jaswant Singh PW-2 (father of the deceased); who resided in his immediate vicinity. Together they proceeded to the spot of occurrence. Later, other relatives including Rajender Kaur PW-8 (sister of the deceased) and Raj Singh PW-11A (cousin brother of the deceased) also arrived at the spot.

17. Harminder Pal Singh informed Jaswant Singh, Harnam Singh, Rajender Kaur and Raj Singh that the appellant had confessed his guilt before him.

18. Statement/*fardbayan* of Harminder Pal Singh [Ex. PW 1/A] was recorded by Insp.Kulbhushan at the spot of occurrence. Insp.Kulbhushan made endorsement/*tehrir* [Ex PW 14/A] upon the statement of the informant and recommended registration of case u/s 302 IPC against the appellant. Accordingly, *rukka* was sent to P.S. Kirti Nagar through HC Ramesh Chand at 05:00 p.m.

19. HC Ramesh Chand reached P.S. Kirti Nagar along with the *rukka* and consequently FIR No. 261/98 was registered u/s 302 I.P.C at 5:10 p.m.

20. At around 6:20/6:25 p.m. HC Ramesh Chand returned to the scene of crime and handed over the copy of the FIR and *rukka* to Insp.Kulbhushan.

21. According to the prosecution, the appellant was found present at the spot of occurrence and was apprehended there itself. Pursuant to his arrest, a Personal Search Memo [Ex. PW 4/A] was prepared by Insp.Kulbhushan in the presence of HC Ramesh Chand.

22. Insp.Kulbhushan conducted spot-investigation and prepared a visual site plan without scale [Ex. 14/B] at the pointing out of Harminder Pal Singh. Manish Kumar PW-13 (a private photographer) was summoned to the scene of crime to take photographs [Ex.PW-13/1-5]. The statements of HC Ramesh Chand, Manish Kumar and father of the appellant, namely - Manohar Singh were recorded in terms of Section 161 Cr.P.C.

23. Ct.Rajesh Kumar PW-5 deposited the body of the deceased in the Civil Hospital Mortuary- Subzi Mandi at 09:00 p.m.

24. A copy of FIR No. 261/98 P.S. Kirti Nagar was received by the learned *Illaq*a Magistrate in terms of Section 157 Cr.P.C at 11:30 p.m.

25. The next day, on July 29, 1998 Rajender Kaur and Jaswant Singh identified the body of the deceased vide statements Ex. PW 14/C and Ex. PW 2/C respectively. Upon completing the inquest proceedings including the preparation of Death Report [Ex. PW 2/B] and Brief Facts [Ex. PW 14/D], Insp.Kulbhushan submitted an application for conducting autopsy along with the inquest papers with the Medical Superintendent- Civil Hospital, Sabzi Mandi at 01:00 p.m. [Ex PW 14/E].

26. At 1:15 p.m. autopsy was conducted by Dr.K.Goyal PW-16 at Civil Hospital Mortuary, Subzi Mandi and Post-Mortem Report was prepared [Ex. PW 16/A].The cause of death was opined to be asphyxia as a result of manual strangulation by other party that was sufficient in the ordinary course of nature to cause death. The probable time since death was stated to be around 26 hours. Two sealed pullandas containing the blood sample and clothes of the deceased (one gown and one underwear) were prepared. The same were handed over to Ct.Rajesh Kumar PW-5 along with the sample seal. Upon completing the autopsy, body of the deceased was handed over to Jaswant Singh [Ex. PW-2/D].

27. The said pullandas along with the sample seal were handed over by Ct.Rajesh Kumar to HC Sushila PW-7; who seized the same vide Seizure Memo [Ex. PW 5/A]. The said fact was duly recorded vide D.D. No. 14A at 04:00 p.m. In furtherance thereof, HC Sushila deposited the pullandas and the sample seal with HC Jodha Singh PW-12 who made an entry to the said effect in the Malkhana Register at Serial No. 1285 [Ex. 12/A].

28. On July 30, 1998 PW-2 Jaswant Singh produced two letters before the police that were seized by Insp.Kulbhushan vide Seizure Memo [Ex. PW 2/A]. The said letters were found by Jaswant Singh upon conducting search of the almirah of the deceased. The first document was a photocopy of the complaint dated May 18, 1998 [Ex. PW 9/A] addressed by the deceased to Ms. Nisha Aggarwal (Reconciliation-cum-Guidance Officer, Department of Social Welfare- Delhi Government) seeking protection from her husband i.e. the present appellant as he had been persistently torturing her. The second document was an original communication dated May 18, 1998 [Ex.PW-9/B] addressed by Ms.Nisha Aggarwal (Reconciliation-cum-Guidance Officer, Department of Social Welfare- Delhi Government) to the A.C.P., Crime Against Women Cell, P.S. Tilak Nagar, Delhi seeking intervention and protection for the deceased. Thereafter, Insp.Kulbhushan recorded the statements of the relatives of the deceased Jaswant Singh, Harnam Singh, Rajinder Kaur and Raj Singh in terms of Section 161 Cr.P.C.

29. On September 14, 1998 the statement of Nisha Aggarwal (Reconciliation-cum-Guidance Officer, Department of Social Welfare- Delhi Government) was recorded by Insp.Kulbhushan in terms of Section 161 Cr.P.C and she confirmed the veracity of the two letters produced by Jaswant Singh.

30. On October 16, 1998 Insp.Davender Singh PW-6 - Draftsman visited the spot of occurrence and prepared notes at the instance of Insp.Kulbhushan. Consequently, scaled site plan [Ex. PW 6/A] was prepared by Insp.Davender Singh on October 21, 1998.

31. Upon conducting enquiry from the Office of A.C.P- Crime against Women Cell, Tilak Nagar, the communication dated May 18, 1998

addressed by PW-9 Ms. Nisha Aggarwal could not be traced in the records maintained at the said office.

32. Armed with the said material collected during investigation, a Final-Report in terms of Section 173 Cr.P.C. was submitted before the Court on October 24, 1998. The prosecution examined sixteen witnesses in support of the charges. Upon conclusion of trial the learned Trial Court held the present appellant guilty for the offence punishable under section 302 IPC.

33. We have endowed careful consideration to the rival submissions advanced at the bar by Shri Harsh Prabhakar, learned Amicus-Curiae appearing on behalf of the appellant and Shri Varun Goswami, learned Additional Public Prosecutor. Synopsis of Submissions submitted by the learned Amicus during course of hearing has also been taken on record.

34. *Apropos* the circumstance of extra-judicial confession emerging from the evidence of Harminder Pal Singh, the learned Amicus urged that it would militate against natural human conduct for the appellant to make an extra-judicial confession before his son of tender age who was bound to harbor immense affection towards his mother and could naturally not be expected to support the appellant in his sinister designs of concealing the crime. It was submitted that the appellant could have easily hood winked Harminder Pal Singh into believing that his mother had died of a heart attack as there were no visible marks of violence on the body of the deceased. Thus, there existed no plausible reason to impel the appellant to utter a confession before his son and further expect him to collude in misleading the world at large that the deceased had suffered a heart attack.

35. The probity of the extra-judicial confession was assailed before us by the learned Amicus on another count. It was submitted that according

to the evidence adduced by Harminder Pal Singh he returned from school on the fateful day at 2:15 P.M and by the said time his mother was already lying dead. Thereafter, the appellant is stated to have made the alleged confession to him. On the other hand our attention was drawn to the contents of D.D. No. 33B [Ex. PW 7/A] that was recorded at P.S. Kirti Nagar at 3:05 P.M wherein it was stated that a quarrel was taking place at E-257, Ramesh Nagar. The said information had been telephonically received at the Police Station from ASI Chander Bhan-PCR; who was not examined during the course of investigation or trial. It was thus stated that the prosecution had not been able to crease the said inconsistency emerging in its case. It was submitted that on this aspect the learned Trial Court erred in observing that a quarrel may have ensued when the relatives of the deceased reached the spot as the said finding is in teeth with positive evidence of Jaswant Singh and Harnam Singh who have deposed that the police personnel had already reached the spot when they arrived. Thus, the relatives of the deceased could not have been the participants in any quarrel that resulted in a call being made to the police.

36. The learned Amicus thereafter sought to discredit the version of the prosecution that the appellant was found at the spot and was apprehended there itself. It was submitted that D.D. No. 11 A [Ex. PW 7/B] and *tehrir* [Ex PW 14/A] were conspicuously silent on the aspect of presence of the appellant at the spot and strongly probablize the assertion of the appellant that he was not present at the time of incident. It was further submitted that the site-plans [Ex. 14/B and Ex. PW 6/A] prepared by the prosecution also did not depict the room wherein the appellant is alleged to have made the extra-judicial confession or the spot from where he was apprehended.

37. The learned Amicus would submit that the case of the prosecution was fraught with innumerable contradictions on material aspects that go to the root of the matter and could not be brushed aside as mere discrepancies, when viewed conjunctively in a holistic perspective. The said contradictions are enlisted by us hitherto-fore.

(i) Jaswant Singh stated that the statement of Harminder Pal Singh was recorded at the Police Station whereas other witnesses have deposed to the contrary.

(ii) The photographer Manish Kumar and the Investigating Officer Inspector Kulbhushan did not notice any visible marks of injury, however, some marks (bruises and abrasions) were found upon the neck of deceased by PW-16 Dr. K. Goyal while conducting Post-Mortem examination.

(iii) Contradictions inter-se in the testimony of various prosecution witnesses on the aspect when the body of the deceased was removed from the scene of crime.

38. In the alternative, the learned Amicus addressed submissions on the aspect of applicability of Section 302 IPC in the facts of the present case. It was fervently urged that even on a demurrer if the allegations leveled by the prosecution were accepted in entirety, the present case would fall within the ambit of Section 304 Part (II) IPC as intention to kill the deceased could not be fastidiously imputed upon the appellant. Admittedly, according to the prosecution there were no marks of violence found upon the body of the deceased except abrasions and bruises upon the neck that were evidently suffered by the deceased during the process of strangulation. It was highlighted that the pressure exerted on the neck was not excessive, in as much as the hyoid bone or other structures underneath were not found fractured. It was submitted that the

unfortunate saga transpired in a fit of rage during a sudden quarrel that erupted between the couple. The appellant was not armed and used his bare hands. He did not take undue advantage or act in a cruel or unusual manner. Reliance was placed upon judgment of the Apex Court reported as 2003 (9) SCALE 604 State of Punjab v. Joginder Singh and Another.

39. *Per Contra*, the learned Additional Public Prosecutor submitted that the appellant was habitual to use of violence and the said fact came to fore in view of the unassailable evidence tendered by Nisha Aggarwal (Reconciliation-cum-Guidance Officer, Department of Social Welfare-Delhi Government) and the complaint dated May 18, 1998 [Ex. PW 9/A] authored by the deceased in her life time, two months before the incident. In this regard, our attention was also drawn to the testimony of SI Jaswant Singh, contents of D.D. No. 7A dated May 16, 1998 [Ex. PW 10/A] and D.D. No. 19A dated May 16, 1998 [Ex. PW10/B] to emphasize that the factum of strained matrimonial relationship independently emerged even *de hors* the evidence tendered by the relations of the deceased.

40. Upon microscopic evaluation of the contours of the case at hand with the able assistance of the counsels, we are of the considered view that the evidence tendered by Harinder Pal Singh suffers from no blemish and is natural. It assumes significance that at a tender age of twelve he can have no *animus*/ill will against his own father that would impel him to stoop to the extent of falsely implicating him for committing the murder of his mother. The factum of the extra-judicial confession having been made to Harinder Pal Singh is in consonance with the natural line of probabilities in as much as it is quite possible for the appellant to have reposed faith in his son and hope that he would extend support to him. The nature of relationship shared between the

accused and the person to whom the confession is made is vital in evaluating the probative value of such confession. The fact that the appellant could have tackled the situation with greater wit and dexterity or that it was futile to make such confession would not erode the credibility of the extra-judicial confession in the peculiar circumstances of the present case, wherein the confession was in fact made by the appellant to his near relation i.e. his own son. We cannot also be oblivious to the fact that such crimes are not executed by seasoned criminals after meticulous planning and pre-meditation, wherein the accused contemplates before-hand how to cover his tracks. Thus the subsequent conduct of the accused after committing such a crime cannot be tested on the lofty anvils of abstract rationality.

41. The fact that the *tehrir* and other contemporaneous documents do not disclose the presence of the appellant at the spot does raise some suspicion if the appellant was actually apprehended by the police at the spot of occurrence, however, in view of the clinching circumstance of extra-judicial confession having been satisfactorily established, the said infirmity pales into insignificance.

42. Similarly not much would turn upon the incongruity highlighted by the learned Amicus that DD No.33-B recorded at P.S Kirti Nagar at 3:05 p.m evidenced that a quarrel was taking place at E-257, Ramesh Nagar even though according to Harminder Pal Singh his mother was already lying dead when he returned from school at 2:15 p.m. It is quite possible that residents from the locality may have conglomerated at the spot, which may have resulted in cacophony and someone may have informed the police that a quarrel was taking place. In this regard we note that it has unequivocally emerged in the deposition of Jaswant Singh and

Harnam Singh that when they arrived many public persons from the locality were found present at the spot.

43. The other discrepancies in the evidence of the prosecution as highlighted by the learned Amicus are not of such nature that possess the potency to dislodge the founding pillars of the prosecution case i.e. the circumstance of extra-judicial confession, factum of strained matrimonial relationship and failure of the accused to substantiate his plea of alibi.

44. However, upon anxious consideration of the matter we are persuaded to accept the alternative limb of submission advanced by the learned Amicus that the present case would fall within the ambit of Section 304 Part (II) IPC.

45. The case of the prosecution is premised on circumstantial evidence and in absence of direct evidence, we are required to reconstruct what may have transpired at the *locus in quo* (scene of crime), after taking valuable clues afforded from the material available on record that would throw some insight. Perusal of the post-mortem report reveals that no marks of violence were found upon the body of the deceased other than the faint bruises and abrasions on the neck that were evidently suffered during the process of strangulation itself. It assumes significance that the hyoid bone or the underlying structures in the neck region such as the cartilages of the larynx and the rings of the trachea were not found fractured. At this juncture we may profit from the luminous observations expressed by Dr. Jaising P. Modi in his authoritative treatise –‘Modi- A Textbook of Medical Jurisprudence and Toxicology, 24th Edition, Reprint 2012, Lexis Nexis Butterworths, Wadhwa Nagpur’. It has been stated by the eminent author that the cartilages of the larynx or the rings of trachea may be fractured when considerable force is used [Pg. 454]. The said fact evinces that excessive pressure was not exerted by the appellant and he

may not have harboured the intention to kill the deceased. The appellant did not take undue advantage or act in a cruel or unusual manner. The unfortunate incident seems to have erupted at the spur of the moment and stemmed from marital discord. It has emerged in evidence that the appellant would frequently quarrel with his wife for obtaining money to purchase liquor as he would largely remain unemployed. A similar incident must have occurred on the fateful day. The deceased must have resisted the demands of the appellant and provocative utterances must have been exchanged between the two. In a fit of rage during the sudden quarrel the appellant grabbed the neck of his wife that resulted in asphyxiation and snuffed her life.

46. Under similar circumstances, the Supreme Court in Joginder Singh's case (*Supra*), as relied by the learned Amicus, held the respondent-accused guilty for the offence punishable under Section 304 Part (II) IPC and awarded a sentence of six years imprisonment. It was observed by the Apex Court that the accused was not armed with any weapon and visited the house of the deceased to recover the money lent to him. When the deceased was not in a position to pay the money, the accused flared up and caught hold of the neck of the deceased. The deceased was frail and slight pressure on his neck resulted in his death. It would be apposite to highlight that a careful perusal of the report in Joginder Singh's case (*Supra*) reveals that the hyoid bone of the deceased was found fractured and he suffered abrasions on various parts of the body including the neck.

47. As highlighted by us earlier, in the present case the deceased did not suffer injury on other parts of her body. Significantly, the hyoid bone and other underlying structures in the neck region such as the cartilages of the larynx and the rings of the trachea remained intact. It indicates that

the pressure exerted by the appellant was not excessive. The said fact when analyzed in conjunction with the attending circumstances enwombing the present incident, strongly dispels the possibility that the appellant harboured an intention to kill the deceased.

48. In view of the discussion comprised in the preceding paragraphs, we dispose the present appeal by converting the conviction of the appellant from one under Section 302 IPC to Section 304 Part (II) IPC. Record reveals that the appellant has undergone incarceration for a period of approximately seven years. Seventeen years have elapsed since the incident and the appellant is probably aged around fifty six years. The circumstance of long lapse of time between the commission of offence and date of decision of the appeal may be taken into consideration as a factor to levy an appropriate sentence. We are therefore inclined to sentence the appellant to the period already undergone by him in custody. The appellant is on bail. Bail bonds and Surety bonds are discharged.

49. TCR be returned.

50. Copy of this decision be sent to the Superintendent- Central Jail, Tihar for updating the jail record.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

FEBRUARY 16, 2016
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