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

% **Judgment dated 18th April, 2016**

+ **CRL.A.406/2012**

NAEEM @ NAVIN KUMAR RAVI

..... Appellant

Through : Mr.Krishan Kumar with Ms. Vidushi
Sharma, Advocates

versus

THE STATE(NCT OF DELHI)

..... Respondent

Through : Ms.Aashaa Tiwari, APP

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. The matter has been taken up today as 14th April, 2016 was declared a holiday on account of birthday of Dr. B.R. Ambedkar.
2. Although the application seeking suspension of sentence during the pendency of the appeal is listed, since the paper book is ready and available and both the counsel are ready with the appeal, we have heard the arguments on the appeal itself.
3. The wife of the appellant was found dead in the room which was occupied by them. As per the prosecution, the appellant and the deceased Neelu had a run away love marriage on 18.07.2009. Post marriage, the couple was residing in a room on the first floor of the House No.RZ-6B, Mohan Block, West Sagarpur, New Delhi. This property was owned by one Sh. Madan Lal. The mother and brother of the deceased were against the matrimonial alliance and snapped all kinds of relations with the deceased, but subsequently the marriage was accepted. The maternal uncle of the deceased one Sh. Ved Prakash was the friend of the appellant who used to

visit the couple at their rented accommodation almost daily.

4. Neelu, the deceased, was found lying dead on a cot in the tenanted room on 23.07.2010 at about 11:40 p.m. It is also the case of the prosecution that after marriage, relations between the deceased and the appellant became strained on account of vast gap in social status and education of the couple. While the appellant was uneducated and unemployed, deceased was highly educated and was pursuing a post-graduation course. The maternal uncle of the deceased Sh. Ved Prakash(PW-7) supported the couple financially.
5. It is also the case of the prosecution that the appellant as also his mother harassed the deceased and would force her to bring money from her mother. The sister and brother-in-law of the appellant used to fight with the deceased. The appellant had also developed an inferiority complex. On the intervening night of 22.07.2010 and 23.07.2010 between 4:00-5:00 a.m., he throttled the neck of the deceased and thereafter brought down the ceiling fan from the roof of the room and tied the rope with the hook on the roof and made a noose on the other end of the rope so that it would appear that the deceased had hanged herself. He also strangled the deceased with a noose of the rope and thereafter put the body of Neelu on the cot and left the room while locking the room from outside. As per the prosecution, the appellant had called Ved Prakash on telephone from Mirzapur, U.P. informing him that Neelu had hanged herself and he had fled being scared from the police.
6. As per the post mortem report, the deceased had been killed by throttling, *i.e.*, manual strangulation. FIR No.295/2010 was registered on 08.09.2010. Appellant was arrested on 09.09.2010 at the instance of Ved Prakash. 27 witnesses were examined by the prosecution. No evidence was led by the defence. Statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure on 12.05.2011.

7. Mr. Krishan Kumar, learned counsel for the appellant submits that the appellant has been falsely implicated in this case. There are material discrepancies in the testimonies of various witnesses. He further submits that the Trial Court has failed to apply the law correctly to the facts of the present case. He submits that there is no explanation for the delay in registration of the FIR. The incident pertains to 23.07.2010 whereas the FIR was registered as late as on 08.09.2010. Counsel contends that the appellant has been falsely implicated in this case as the family members had opposed the love marriage.
8. Additionally, the counsel contends that the appellant and the deceased belong to two separate religions. The appellant was never liked by the family members of the deceased. Counsel contends that in fact it was a case of honour killing as Ved Prakash who was the maternal uncle of the deceased was a friend of the appellant. He was also annoyed with the fact that despite being his friend, he was not informed about the marriage between the appellant and his niece Neelu and thereafter they were residing at Karawal Nagar.
9. Counsel also contends that while it is the case of the prosecution that on 23.07.2010, the appellant had made two phone calls to Ved Prakash, while the call records would show to the contrary that phone calls were made by Ved Prakash to the appellant at 5:14 p.m. and 9:23 p.m. and not that the appellant had made phone calls to PW-7, Ved Prakash. Counsel also submits that PW-7 is not a reliable witness. He submits that call records would show that he had received phone calls on 22.07.2010 at 7:35 p.m., 8:11 p.m. and 9:53 p.m. while it is the case of the prosecution and the testimony of PW-7 that he was at the house of the appellant and in case he was in the house and in the room of the appellant, he would not be making phone calls to the appellant.

10. Counsel further submits that the appellant had celebrated his marriage anniversary which was in the same month and the photographs would show that the couple was happily married. He further submits that being a love marriage, it is highly improbable that the appellant would murder Neelu. Counsel submits that despite the direction of the SDM to examine the finger prints from the ceiling fan, no effort was made and on account of the lapse of the prosecution, the appellant cannot be made to suffer.
11. Learned counsel for the appellant further contends that even otherwise no case under Section 302 IPC is made out against the appellant because as per the prosecution on the date of the incident, the husband and wife had quarreled and in a rage of anger, the appellant strangled his wife with whom he has had a love marriage. He further submits that the Court must take into consideration that there was no weapon of offence, the appellant did not act in a cruel manner. It is not a case where a number of blows were given to the deceased and thus, the sentence should be converted under Section 304 Part I IPC. At this stage, he contends that he also does not assail the order on conviction.
12. Per contra, Ms. Aashaa Tiwari, learned counsel for the State submits that the prosecution has been able to prove its case beyond the shadow of reasonable doubt. The testimonies on record would show that the appellant was last seen in the company of the deceased. Even otherwise, the appellant being the husband of the deceased and the deceased were residing in the same room on rent. However, there is no explanation rendered by the appellant in his statement under Section 313 Cr.P.C. as to how Neelu had died. Counsel submits that the fact that the appellant had staged a drama to show as if the deceased had committed suicide, his conduct should be taken as an incriminating circumstance against him as the post mortem report would show that Neelu had died on account of manual strangulation and it

was not a case of suicide. Counsel further submits that the rope was put on the hook of the ceiling fan and the ceiling fan was brought down, thus the appellant had made an attempt to mislead and created a scene of suicide whereas it was a homicide. Reliance is placed on the testimony of Dr.B.N. Mishra (PW-4).

13. We have heard the learned counsel for the parties and considered their rival submissions.
14. Although the star witness in this case is PW-7, Ved Prakash who is the uncle (*mama*) of the deceased, the testimony of PW-1, Bal Kishan would show that the appellant was residing as a tenant in the house of one Madan Lal along with his wife. The mother of the deceased PW-2, Smt. Bimla has also testified with regard to the fact that Neela had run away from home along with the boy, the appellant herein and thereafter the appellant and her daughter were married. She had come to know about the factum of marriage after three months. She has also testified that the appellant was jobless and the household expenses were borne by her brother Ved Prakash. Although this witness has also testified that money used to be demanded, but no charge under Section 498-A has been framed in this case. This witness has also deposed that on 22.07.2010, she had talked to her daughter between 5:00 to 6:00 p.m. Ved Prakash (PW-7) had come to the house of PW-2 and informed her about some altercation between the deceased and the appellant. PW-7 had stayed the night with his sister PW-2. She has also testified with regard to the phone call to the appellant from his brother PW-7. The fact that appellant was residing in the tenanted premises along with his wife also stands proved by the testimony of PW-3, Sanjay Ravi, brother of the deceased as also by PW-5, Madan Lal, landlord who testified that the appellant was staying with his wife for the past six months prior to the death of the deceased.

15. PW-7, Ved Prakash has testified that he had visited the appellant's house and his niece on 22.07.2010. The couple was quarrelling. He advised them to live peacefully. He testified that on 23.07.2010, he received a phone call from Naeem at about 5:00 p.m. telling him that he was in Nangloi. He told him not to come to his room on that day and to come in the morning next day. At about 9:30 p.m., the accused called him again saying that Neelu has committed suicide and is dead. This witness asked him why was he joking. The accused told him that this was not a joke but a true fact. The witness testified that he went to the landlord Madan Lal and informed him what the accused had told him on phone. The witness along with the landlord Madan Lal went to his house and apprised his sister, *i.e.*, mother of Neelu about the same. Madan Lal called the police on phone and they again came back to the house of Madan Lal. Police reached the house of Madan Lal. Police made him sit in their gypsy. The police went upstairs to the room of accused Naeem. The witness did not accompany the Police there. He was told by police that Neelu was lying dead in the room on a bed and froth was coming out from her mouth. The police took the dead body to DDU Hospital. Thereafter, police arrested the accused on 09.09.2010 at his instance vide arrest memo Ex.PW7/A bearing his signatures at point 'A'. His personal search was conducted vide memo Ex.PW7/B bearing his signatures 'A'. He made a disclosure statement Ex.PW7/C bearing his signatures at point 'A'. Thereafter accused pointed out the place of occurrence vide memo Ex.PW7/D bearing his signatures at point 'A'. The witness deposed that accused Naeem had called him on his mobile phone No.9650522898 from his mobile phone number, the last three digits of which were 730, he did not remember the exact number. He had given the aforesaid mobile phone to the accused and the sim card of the same was either in his name or in the name of Neelu.

16. Another relevant witness is PW-6, Smt. Kiran, wife of the land lord Madan Lal, who has testified that the appellant was residing along with his wife as a tenant in their house.
17. PW-4, Dr. B.N. Mishra, Medical Officer, DDU Hospital conducted post mortem on the body of deceased Neelu. He has testified as under:

“On external examination I found the following injuries:-

1. Three semicircular apartly and vertically placed bruises present on the anterior aspect (left side of trachea) of neck with size of 0.3 cm in diameter each with abraded margins and crescentic shaped pressure marks imprinted at marginal area. The colour of bruise appeared reddish brown alongwith underneath tissue at bruised site found reddish brown in colour.
2. One bruise of size 1.0 cm x 0.7 cm, oval shaped present below the angle of left mandible with reddish brown in colour.
3. One circular shaped bruise of size 0.2 cm in a diameter present on the mid part of the chin with reddish brown in colour.
4. One linear pressure impression mark (ligature mark) present on the right lateral aspect of the neck, horizontally placed and at the level of thyroid cartilage with 9.0 cm in length and 0.6 cm in width. The colour of the pressure mark was pale looking light brown without having any bruising, abrasion, hardness and parchmentation. One section underneath the pressure mark tissue appeared whitish pale.

After post mortem examination I opined that:

- (i) Time since death:- Approximately 24-32 hours prior to post mortem examination.
- (ii) The cause of death in this case was due to asphyxia caused by manual strangulation (throttling). However, to rule out any concomitant poisoning/Drugs the blood and viscera preserved for chemical analysis by Forensic Lab.
- (iii) All injuries except external injury No.4 are ante mortem in nature and same in duration. The external injury No.1 is sufficient to cause death in ordinary course of nature. The external injury No.4 appears post mortem in nature.
- (iv) Manner of death is homicide.”

18. Although the order on conviction has not been assailed, based on the testimony of the witnesses, more particularly, the testimonies of PW-5, Madan Lal (landlord), his wife PW-6, Smt. Kiran stand established that the appellant was residing with his wife at the tenanted room. The appellant was last seen staying along with his wife stands proved by PW-5 which also stands corroborated by PW-3, Sanjay Ravi, brother of the deceased. There is no explanation on behalf of the appellant in his statement under Section 313 Cr.P.C. as to how his wife had died at the time when he was residing with her in the same room. The appellant has not been able to discharge the onus which would fall on him under Section 106 of the Evidence Act.
19. The only question which arises for consideration in this case is as to whether a case under Section 302 IPC is made or a case under Section 304 Part I IPC.
20. Counsel for the appellant contends that the case of the appellant would fall in the category of culpable homicide not amounting to murder.
21. Exception 4 of Section 300 of the Indian Penal Code reads as under:

"300. Murder-

Exception 1. - xxxx xxxx xxxx xxxx

Exception 2. - xxxx xxxx xxxx xxxx

Exception 3. - xxxx xxxx xxxx xxxx

Exception 4. - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

Explanation- It is immaterial in such cases which party offers the provocation or commits the first assault."

22. Section 304 of the Indian Penal Code reads as under:

“304. Punishment for culpable homicide not amounting to murder:

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

Section 304 consists of two parts, the first dealing with second degree culpable homicide and the second dealing with third degree culpable homicide as has been noted above.”

23. In ***Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh (2006) 11 SCC444*** the Hon'ble Supreme Court enumerated some of the circumstances relevant to find out whether there was any intention to cause death on the part of the accused. The Apex Court observed as under:

“...Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls Under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable Under Section 302, are not converted into offences punishable Under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable Under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the

following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre-meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention...”

24. The distinction between Section 304 Part I and Part II has been drawn by the Hon'ble Supreme Court in *Alister Anthony Pareira v. State of Maharashtra (2012) 2 SCC 648*, in the following words:

*“..... For punishment Under **Section 304 Part I**, the prosecution must prove: the death of the person in question; that such death was caused by the act of the accused and that the accused intended by such act to cause death or cause such bodily injury as was likely to cause death. As regards punishment for **Section 304 Part II**, the prosecution has to prove the death of the person in question; that such death was caused by the act of the accused and that he knew that such act of his was likely to cause death...”*

25. In *Vijay Ramkrishan Gaikwad V. State of Maharashtra: (2012) 11 SCC 592*, the Hon'ble Supreme Court made the following observations:

“The nature of the offence would certainly depend upon the other attendant circumstances which would help the court to find out definitely about the intention on the part of the accused. Such attendant circumstances could be very many, they being (i) whether the act was premeditated; (ii) the nature of weapon used; (iii) the nature of assault on the accused. This is certainly not an exhaustive

list and every case has to necessarily depend upon the evidence available. "

26. Applying the law laid down to the facts of the present case. We find that the deceased and appellant had a love marriage which was against the wishes of family members of the deceased. In fact, the mother of the deceased learnt about the factum of the marriage only after three months. Testimony on record also shows that the appellant was jobless and the household expenses were being borne by Ved Prakash (PW-7), *mama* of the deceased. It was also noticed that no charge under Section 498-A IPC was framed in this case. On the fateful day, there was some altercation between the married couple. Ved Prakash had visited their house. He found the couple was quarelling. He advised them to stay peaceful. Evidence also shows that the bone of contention was that the appellant was jobless and not as qualified as his wife and, thus he had developed an inferiority complex. The medical evidence shows that the deceased died due to asphyxia caused by manual strangulation. No weapon was used. Evidence on record also shows that this was a result of a quarrel. There was no pre-meditation, no prior enmity. The appellant did not act in a cruel manner.
27. In view of the discussions above, the sentence of the appellant is converted to one under Section 304 Part-I IPC and the order on sentence is modified to eight years.
28. The appeal stands disposed of in above terms.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

APRIL 18, 2016 pst