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

+ CRL.A. 776/2016 and CRL.M.(BAIL) 1522/2016

% Date of decision : 8th September, 2016

BINDU SHARMA Appellant
Through : Ms. Inderjeet Sidhu, Adv.

versus

STATE Respondent
Through : Ms. Aashaa Tiwari, APP
along with Insp.Rajesh
Dogra, P.S. Sunlight Colony.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE P.S. TEJI

JUDGMENT (ORAL)

GITA MITTAL, J.

CRL.A. 776/2016

1. The appellant is stated to have been in custody for a period of approximately three years. It is submitted by Ms. Inderjeet Sidhu, learned counsel for the appellant that so far as the appellant is concerned, it is a case of no evidence at all against her client and that she deserves to have been acquitted by the trial court. A request is made by learned counsel for the parties that inasmuch as the record of the lower court has been received and tagged along

with the appeal of the co-convict being CrI.A.No.675/2016 (also listed here) and paper books have been prepared, the present appeal may be heard.

2. With the consent of both parties, this appeal is taken up for consideration today itself.

3. The appellant has challenged the judgment dated 24th May, 2016 passed in Sessions Case No.06/2015 arising out of FIR No.273/10 registered by P.S. Sun Light Colony whereby the appellant and her son-in-law – Anil Kumar Sharma were convicted for commission of the offence under Section 302 read with Section 120B IPC. The third accused, namely, Ramesh Kumar – brother of Anil Kumar Sharma was acquitted.

4. By a consequential order dated 26th May, 2016, the appellant stands sentenced to life imprisonment and fine of ₹2,500/- for commission of the offence punishable under Section 302 read with Section 120B IPC and in default of payment of fine, to undergo simple imprisonment for five months. The appellant was allowed the benefit of Section 428 of the Cr.P.C.

5. The case of the prosecution before the trial court was that one Gopal Sharma was the owner of property no.H.No.102, Hari Nagar Ashram, New Delhi which consists of built up and open area on a plot ad measuring 700-800 sqr.ft. There was an *akhara* being maintained on the said property as well. Gopal Sharma's family consisted of his wife Meenakshi (deceased) and son Shivang Sharma who at the relevant time was aged about 21 years. Anil Kumar Sharma appears to have joined the *akhara* for the last about

20 years and was living with his wife and son in two rooms constructed by Gopal Sharma on the first floor of the same property.

6. It appears that the relations between Gopal Sharma and his deceased wife Meenakshi were strained purportedly for the reason that Gopal Sharma wanted to adopt Anil Kumar Sharma. Meenakshi Sharma was objecting to this adoption as a result of which, it appears that Gopal Sharma was not on talking terms with his wife or their son Shivang Sharma (PW-7).

7. Ms. Inderjeet Sidhu, learned counsel for the appellant has pointed out that the prosecution had urged that the motive for the commission of the offence in the case was acquisition of Gopal Sharma's property. It is urged by Ms. Sidhu, learned counsel for the appellant that litigation qua this property was pending for several years and consequently Anil Kumar Sharma would not have nursed any motive to cause any harm to the family members of Gopal for such motive.

8. Be that as it may, so far as the unfortunate incident is concerned, the 28th of July, 2010 happened to be the birthday of the son of Anil Kumar Sharma who had hosted a party in regard thereof. This party was stated to have continued till 1.00 am on the 29th of July, 2010. The prosecution case was that Meenakshi Sharma and her son Shivang were not invited to this party because of Anil Kumar Sharma's differences with them.

9. It is also in the evidence of Master Shivang who appeared as PW-7 that he was studying Mass Communications from the Punjab

Technical University in the year 2010. On the night intervening 28th/29th of July, 2010, he has stated that he was studying and at about 3.00 am had wanted to ease himself. However, when he tried to get out of his room, he could not do so for the reason that the door of the room was bolted from outside. His mother did not respond when he called out to her to open the door. He tried to reach his mother Meenakshi Sharma on her mobile which was responding as being switched off. PW-7 claims to have gone to sleep.

10. At about 7.00 am of the next morning of the 29th of July 2010, PW-7 heard their servant Sachin knocking on the main door as per usual practice. On hearing the knocking, PW-7 called out to Sachin to open the door of his room as well. Sachin is stated to have climbed to the roof of the property and opened the bolt of Shivang Sharma's room. Upon coming out, Shivang Sharma went to his mother's room where he found that the room was shut, though not bolted. On opening the door, he found his mother Meenakshi Sharma lying on the floor with a string tied around her neck. The room appeared to have been ransacked.

11. The police was called by PW-7 which came to the spot and recorded his statement the *rukka* (PW7/A). Pursuant thereto FIR No.273/2010 was registered by P.S. Sun Light Colony. As a result of the statement (Ex.PW7/A), the police arrested Anil Kumar Sharma who is stated to have made a disclosure statement implicating his mother-in-law – Bindu Sharma (the present appellant) and his Brother – Ramesh Kumar. These two persons

were arrested as a result. Pursuant to the said disclosure statement, the police also effected recoveries on the pointing out by Anil Kumar Sharma of certain articles. It is not necessary for us to examine the recoveries in detail so far as the present appeal filed by Bindu Sharma is concerned.

12. During investigation, an autopsy was conducted on the body of Meenakshi Sharma (Ex.PW26/A) wherein the doctor had opined that she had died because of “*asphyxia due to ante mortem ligature, strangulation and smothering*”. The post-mortem was conducted on 30th of July 2010 at 2.10 pm. The doctor had opined the time since death as approximately 36 ± 2 hours. As per this opinion, the deceased would have therefore, expired in the night intervening 28th/29th July, 2010.

13. Upon completion of the investigation, the police filed a chargesheet under Section 173 of the Cr.P.C. On a consideration of the matter, charges were framed against all the three accused persons by order dated 26th April, 2011 that pursuant to criminal conspiracy, they had committed murder of Meenakshi Sharma thereby committing offences under Section 302 read with 120B IPC. All the accused had pleaded not guilty and claimed trial.

14. The prosecution had examined 28 witnesses in support of its case during trial. No defence evidence was led. After considering the evidence led on record as well as the statements of the three accused persons under Section 313 of the Cr.P.C., by the impugned judgment dated 24th May, 2016, the trial court acquitted Ramesh Kumar while founding Anil Kumar Sharma and the appellant -

Bindu Sharma guilty for commission of offences for which they were charged and sentenced them as above.

15. We have heard Ms. Inderjeet Sidhu, learned counsel for the appellant and Ms. Aashaa Tiwari, learned APP for the State at length. It is submitted by Ms. Sindhu, learned amicus curiae for the appellant that there is only one piece of evidence which has been relied upon to establish the commission of offence by the appellant. Our attention has been drawn by Id. Counsel to the testimony of PW-3, a child witness who was aged about 12 years as on 1st December, 2011 when his testimony was recorded by the trial court. In the witness box, PW-3 has stated that he had been brought to the house of Anil Kumar Sharma only on 26th of July, 2010 by the present appellant to take care of Anil Kumar Sharma's child. On the 28th of July 2010, after the birthday party of the son of Anil Kumar Sharma was over, PW-3 had been called by Anil Kumar Sharma to open the door of one aunty who was in a room in front of his house. As this room was bolted from inside, PW-3 was made to climb through the ventilator of the room to open the door from inside. The witness stated that Anil Kumar Sharma helped him climb up to the ventilator. PW-3 has stated that he had entered the room from the ventilator and opened its bolt from inside. When he came out, Anil Kumar Sharma had entered into the room and that he (PW-3) thereafter went upstairs to sleep. The witness has stated that when he left, the present appellant Bindu and another person were there along with Anil Kumar Sharma. The witness had identified the present appellant as well as the other

accused present in court.

16. Ms. Sidhu, learned counsel for the appellant has submitted that from the testimony of the witness, it is completely unclear as to the location of the appellant Bindu along with a third person. She would point out that it is also not clear as to whether the testimony, if read correctly, has to read as if PW-3 had seen the appellant Bindu when he went upstairs to sleep. The submission is that this testimony does not draw any connection of the appellant with either the room of the deceased which PW-3 had opened nor does it in any manner establish that Bindu Sharma had any kind of interaction or connection with the deceased or with Anil Kumar Sharma's actions that night. It is argued that there is nothing in the evidence to connect the appellant to any of the events which led to murder of the deceased.

There is substance in these submissions. It is not possible to discern from PW-3's evidence, the location at which he claimed to have spotted the appellant.

17. We also find that a statement was got recorded by the police of Master Neeraj (PW-3) under Section 164 of the Cr.P.C. by the Magistrate during investigation immediately after the unfortunate incident on the 31st of July 2010. The witness has proved this statement as Ex.PW3/A on record. We have been carefully taken through this statement and we find that so far as the episode of his being asked to open the ventilator or to enter the room to open the door is concerned, in Ex.PW3/A, PW-3 refers to opening the door to the room in the "*neighbouring house (paros wale ghar)*".

Ex.PW3/A contains no reference either to the appellant Bindu Sharma or any third person.

18. The above narration from the record shows that PW-3 had made no reference at all to the appellant in his statement recorded on oath on the 31st of July 2010 and that his court testimony suffers from material improvements so far as the evidence against the appellant is concerned. For this reason and that to the extent that it implicates the appellant the court testimony of PW-3 Neeraj, cannot be relied on and deserves to be discarded.

19. Ms. Aashaa Tiwari has been unable to point out any other evidence to support the guilt of the appellant.

20. In view thereof, we also agree with learned counsel for the appellant that there is no legal evidence to support the charge of the prosecution against the appellant Bindu Sharma.

21. As a result, the judgment dated 24th May, 2016 qua the appellant to the extent it finds her guilty of having committed the offences with which she was charged is hereby set aside and quashed.

The appellant shall be set at liberty forthwith, if not required in another case.

22. Let a copy of this judgment be conveyed to the appellant in jail no.6 as well as Superintendent, Tihar Jail by special messenger today itself.

CRL.M.(BAIL) 1522/2016

23. In view of orders passed in the main appeal, this application does not survive for adjudication and is hereby dismissed.

GITA MITTAL, J

P.S.TEJI, J

SEPTEMBER 08, 2016

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