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

+ CRL.L.P.No.383/2016 and Crl.M.A.No.11467/2016

% Date of decision : 27th September, 2016

STATE (NCT OF DELHI) Petitioner
Through: Ms. Aashaa Tiwari, APP.

versus

MOHD. CHAND Respondent
Through: None.

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

JUDGMENT (ORAL)

GITA MITTAL, J.

Crl.M.A.No.11467/2016

Heard.

For the reasons stated, the delay in filing this petition is condoned.

The application is disposed of.

CRL.L.P.No.383/2016

1. The record of the lower court has been received and we have been carefully taken through the same by Ms. Aashaa Tiwari, learned APP for the State.

2. The prosecution has sought leave to appeal under Section 378 of the Cr.P.C. in respect of the judgment dated 28th of September 2015 passed by the learned Additional Sessions Judge in SC No.37/2013 arising out of FIR No.9/13 registered by P.S. Zafrabad under Sections 302/498A of the IPC whereby the respondents were acquitted of the offences under Sections 302 and 498A of the IPC with which they were charged.
3. It is pointed out that on 13th of January 2013, information was received from the Duty Constable Bhopal Singh posted at Jag Parvesh Chandra Hospital at P.S. Zafrabad that Munni, wife of Mohd. Chand was got admitted in the Jag Parvesh Chandra Hospital by her *devar* (husband's younger brother) in an unconscious condition and the doctor had declared her dead. This information was logged as DD No.37-A by the police.
4. It is on record that the police have proceeded to the spot and a statement(Ex.PW 2/A) of Smt. Ujali, mother of Munni was recorded by the SDM, Seelampur, Shri R.C. Rahi (PW-2).
5. In this statement, Smt. Ujali (PW-11) had stated that her daughter Munni was married to Mohd. Chand (the respondent herein) about six years ago who used to keep her hungry and harass her. She stated that on 13th January, 2013, her other son-in-law Azhar had informed her that Mohd. Chand had run away after murdering her daughter and that she also suspected that Mohd. Chand had murdered her daughter Munni by strangulating her.

6. Inasmuch as the victim Munni had died an unnatural death within seven years of her marriage, the above FIR being FIR No.9/13 was registered by P.S. Zafrabad under Sections 498A/304B IPC.
7. Munni's MLC, recorded by Dr. Mohd. Niyaz (PW-15) from the Jag Pravesh Chandra Hospital, was proved as Ex.PW15/A.
8. PW-18 S.I. Gaurav Chaudhary, who was the first investigating officer of the case, on 14th January, 2013, after recording of statement of Ujali, mother of the deceased, by the SDM, got conducted the post-mortem on the body of the deceased Munni.
9. The post-mortem (Ex.PW1/A) was conducted on the body of the deceased Munni by Dr. Neha Gupta (PW-1). She opined the cause of death as "*asphyxia as a result of antemortem strangulation*". The doctor had also noted an external injury being "*dry hard brownish abraded, parchmented ligature mark present horizontally and completely around the neck*" which was opined by her as sufficient to cause death in ordinary course of nature.
10. PW-18 had endorsed a *rukka* (Ex.PW18/A) on the statement of mother of the deceased, Ujali. This was sent to the police station resulting in registration of FIR No.9/13. The copy of the FIR was handed over to SI Gaurav Chaudhary for investigation.
11. It appears that during investigation, the Mobile Crime Team (North-East) had inspected the spot. PW-13 S.I. U. Balashankaran, Incharge, Mobile Crime Team (North-East) had prepared the crime report (Ex.PW13/A). The scaled site plan (PW8/A) was prepared by

PW-8 Inspector Mukesh Kumar Jain.

12. The site plan was prepared on the pointing out of brother of the deceased, Mohd. Taqi (PW-5). The investigating officer has testified that the respondent Mohd. Chand was arrested on 15th January, 2013, his location being premised on '*secret information*'. It is claimed by the prosecution that pursuant to the disclosure made by him, a muffler was seized vide Ex.PW12/C by the police.

13. The investigating agency did not seek forensic opinion with regard to the muffler.

14. This muffler was subsequently shown to Dr. Neha Gupta (PW-1) who gave her opinion as Ex.PW1/B to the effect that injury No.3 was possible by this ligature material.

15. So far as the commission of offence is concerned, the only substantive evidence which was laid by the prosecution before the learned trial court was the oral testimony of the brother of the deceased Mohd. Taqi (PW-5). He stated in court that on the date of the incident i.e. on 13th January, 2013, he had gone to his sister Munni's house in the day time and found the respondent quarrelling with her and beating her. He claims to have witnessed some scratches on her hand. After counselling the respondent, Mohd. Taqi left the spot. He has claimed that he had returned to his sister's house in the evening when he saw the respondent strangulating Munni with a muffler. When Mohd. Taqi (PW-5) entered the room, the respondent pushed him aside and fled from the spot.

16. The trial court has considered the conduct of PW-5 and his testimony in great detail. Keeping his conduct aside, his testimony by itself has been found as not inspiring any confidence as it suffers from material contradictions and embellishments. It is noted that in the witness box, Mohd. Taqi (PW-5) could only give the date and year of the incident but was not aware of the month in which it had occurred. He testified that he counselled the respondent at the paint factory but subsequently, on the suggestion of the learned Additional PP on the 13th of January 2013, he stated that he had first visited his sister's house during day time and had found him quarrelling and beating his sister and had counselled him at his house.

17. Even though, Mohd. Taqi (PW-5) had stated in his examination-in-chief that he had reached the spot at a time when the respondent was physically strangulating his sister, most surprisingly he made no effort to stop him or to look after the welfare of his sister or to take her to the hospital. He claimed that he chased the respondent for barely 10-15 steps but he managed to flee away. It is claimed by PW-5 that he returned to help his sister but thereafter, inexplicably disappeared for a period of 1 to 1½ hours. There is no evidence at all as to what Mohd. Taqi (PW-5) was doing for the period after chasing his brother-in-law. What is completely unbelievable and baffling is that if he had witnessed the murder, why did Mohd. Taqi (PW-5) not inform the mother of the deceased Ujali (PW-11) about the incident. As per Ujali, she got the information

about the occurrence from the respondent's brothers. Mohd. Taqi (PW-5) made no effort at all even to inform the police despite having witnessed the grievous and heinous crime on the 13th of January 2013.

18. On the 14th of January 2013 when the SDM R.C. Rahi (PW-2) visited hospital and recorded the statement of the mother of the deceased Smt. Ujali (PW-11), Mohd. Taqi (PW-5) gave no statement to him that he claims to have actually witnessed the murder. It is admitted by both Shri R.C. Rahi, the then SDM, Seelampur (PW-2) as well as Mohd. Taqi (PW-5) that he had met the SDM.

19. We find that the learned trial judge has carefully analyzed the record and held that the recording of the FIR was unexplainably delayed from 10:00/10:30 am till 7:25 pm when the FIR was registered. Mohd. Taqi's (PW-5) statement is stated to have been recorded at about 7:25 pm.

20. In this background, there is no reason at all to fault the observations and findings of the learned trial judge to the effect that Mohd. Taqi (PW-5) cannot be relied upon to support the conviction of the respondent. The learned trial judge has rightly concluded that there was unexplained and fatal delay in registering the FIR by the police.

21. One other circumstance which has been pressed before us by Ms. Aashaa Tiwari, learned APP for the State to support the assertion of culpability of the respondent is the alleged recovery of a muffler from the respondent. It is claimed that this muffler is the ligature

material which had caused the injury no.3, noted by the doctor who conducted the post-mortem.

22. The recovery of this muffler was staunchly contested by the defence on the ground that no public witness was joined in the investigation or on the recovery. Our attention is drawn to the statement of the investigating officer in the cross-examination that the place of arrest was in a thickly populated area near the Aggarwal Sweets and no effort has been made to join any person from the staff of this shop as independent public witnesses in the investigation, if the arrest and recovery were really being effected.

23. It is in the cross-examination of PW-5 that Munni used to live with the respondent in a room on the third floor of the house and that there was one more tenant on the third floor itself. Additionally, there were tenants residing on the first and second floors of the house.

24. The investigating officer has not cared to examine any other tenant in the building or produce any other public person as a witness in support of the case.

25. In para 11 of the impugned dated 28th September, 2015, the learned trial judge has noted that even if recovery of the muffler was effected from the possession of the respondent, the same does not by itself establish that it was the ligature material. We find that Mohd. Taqi (PW-5) has admitted that similar types of mufflers are easily available in the market.

26. So far as the confirmation of the muffler having been the

ligature material used by the accused for commission of the offence involved in the case, we find that the muffler was not subjected to a forensic examination. No material linking the muffler to the commission of the offence in the nature of finger print or blood or any other DNA sample of the deceased has been reported.

27. In the above circumstances, the challenge by the prosecution to the judgment dated 28th September, 2015 is completely devoid of any legal merit and has to be rejected. This leave petition is completely misconceived and is hereby dismissed.

GITA MITTAL, J

P.S.TEJI, J

SEPTEMBER 27, 2016

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