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

R-35

+ **CRL. A. 303/2002**

RAJ KUMARI ALIAS SARJU DEVI

..... Appellant

Through: None

Versus

STATE

..... Respondent

Through: Ms Kusum Dhalla, APP for State

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE I.S. MEHTA**

JUDGMENT

% **01.12.2017**

1. This is an appeal against the judgment dated 28th March, 2001 passed by the learned Additional Sessions Judge, Delhi in Sessions Case No.53/99 arising out of the FIR No.97/99 registered at Police Station ('PS') Narela Industrial Area convicting the Appellant under Section 302 IPC and the order on sentence dated 29th March, 2001 whereby she has been sentenced to imprisonment for life with fine of Rs.5,000/- and in default of payment of fine to undergo simple imprisonment for two months.

2. At the outset, it requires to be noticed that although the appeal has been on the board for over a month, none appeared for the Appellant. The Court noted that by an order dated 23rd October 2002, this Court had suspended the sentence of the Appellant during the pendency of the appeal, subject to terms. In that order, it was noted that she (Appellant) was as of that date over 67 years of age and her husband had expired a long time back.

3. With the assistance of Ms. Kusum Dhalla, learned APP for the State, the Court has perused the impugned judgment of the Trial Court and the entire record.

4. On 27th March, 1999 at about 9.50 am, information was received at PS Narela Industrial Area that a dead body was lying on the roof of the house of Paras Nath Yadav (arrayed as Accused No.2-A2) in Gali No.4, Swatantra Nagar. It was also reported that the house was locked.

5. When the police reached there, they found a lock affixed on the main gate of the house. When they went to the roof of the house of Paras Nath from the adjoining terrace of a neighbour i.e. Ishwar Singh (PW-5), they found the dead body of the deceased Lal Chand son of Ram Dass (hereafter, 'the deceased') lying on the floor. There were multiple injuries on the left cheek, chin, head and the right arm was fractured. There were also injuries on the jaw, neck, chest and private parts of the body of the deceased. Blood had collected near the dead body of the deceased.

6. Mohinder Singh, a *chowkidar* (PW1) gave a statement to Inspector Sokhanvir Singh wherein, *inter alia*, he disclosed that A-2 had a tailoring shop in the area. He claimed that on the intervening night of 26th and 27th March, 1999 at around 3 am when he was performing his duty in Gali no.5-B when he noticed A-2 coming from the side of his house along with his mother Raj Kumari @ Sarju Devi (the Appellant A-1), his wife and sister. When PW-1 stopped A-2 and inquired where he was going at 3 am, A-2 replied that he was going home as his sister was getting married. When

asked whether there was any train at that time, A-2 replied that they would be staying at the railway station. According to PW-1, A-2 had a packet in his hand. He noticed that all of them thereafter proceeded towards the railway station.

7. When the crime team reached the spot they found that two sticks were lying there and the smaller one was stained with blood. There were some pieces of bangle lying at the spot. There were live wires and a kerosene oil stove. There were also two empty bottles of liquor.

8. The post-mortem performed on the body of the deceased noted 16 injuries of which four were incised wounds, six were abrasions, and there was fracture of both bones in middle of right forearm and a number of bruises all over the body. The cause of death was stated to be “craniocerebral damage due to blunt force impact over the head by other party”. It was noted that the thoracic injuries also contributed to the cause of death.

9. Two of the witnesses on which considerable reliance has been placed by the Trial Court, in the present case of circumstantial evidence, were Ram Kumar (PW-4) and Mohinder Singh (PW-1). PW-4 claimed that on the evening of 26th March, 1999 he was sitting on the roof of his house. He noticed that A-1, her daughter and the deceased were sitting on the roof of their house. He stated that A-1 and the deceased had ‘exchanged abuses’. He added that the children of the Appellant used to call the deceased as ‘chacha’ but he posed as her husband. In his cross-examination, he stated that “I cannot say on what matter the accused Raj Kumari had exchanged abuses with Lal Chand. I cannot even understand their dialect properly. Earlier also

I had seen such exchange.” In discussing the above evidence of PW-4, the Trial Court noted that he had named A-1 as the person present at the roof of the house. It was therefore concluded that “last seen evidence has not been proved against the accused Paras Nath.”

10. The Trial Court then discussed the evidence of bloodstained shirt recovered from the house of A-2 but held that the prosecution failed to prove that it was pursuant to any disclosure by A-2. Further, there was no evidence that the bloodstains on the shirt matched the blood group of the deceased. Barring this shirt, there was no other evidence to connect A-2 with the crime. He was accordingly acquitted by the Trial Court.

11. As far as the Appellant was concerned, the trial Court held that the case against her “has been proved beyond any shadow of doubt.” The evidence of PW-4 was believed as far as her being ‘last seen’ with the deceased was concerned. The other circumstance was that her (A-1) house had been found locked and that PW-1 (the *chowkidar*) had noticed the Appellant going away along with her other family members at 3 am. Upon her surrendering in the Court on 7th April, 1999, she purportedly made a disclosure statement on the next day which led the police to a plot of land in Gali no.3-B from where she got recovered a *kulhari* (Ex.P10). Although this recovery was denied by the Appellant, the trial Court rejected that contention. It concluded that the recovery was at her instance and it showed that she was “instrumental in the death of deceased Lal Chand.”

12. As regards absence of motive, it was concluded that the deceased had an evil eye on the daughter of A-1 and this had led to the crime. The trial Court

surmised that “the prosecution could not have produced the daughter of the accused Raj Kumari because she would not have supported the prosecution on the aforesaid aspect.”

13. In the considered view of this Court, the judgment of the trial Court rests on extremely weak and untenable premises. With the acquittal of the co-accused A-2, the prosecution evidence had to be such that it points to the sole culpability of the Appellant for the crime. On the face of it, given the number of injuries on the body of the deceased, it is impossible that they could have been caused by a person much less a woman of the age of A-1. That aspect of the matter seems to have been completely missed by the trial Court.

14. Secondly, at 3 am PW-1 noticed the entire family leaving their house for the railway station. This included A-2 and his sister. Thirdly, the evidence of ‘last seen’ at the instance of PW-4 does not inspire confidence. With the houses being next to each other, given the number of injuries on the body of the deceased, it is impossible that no one would have heard the sound and the cries of the deceased when he was attacked.

15. More importantly, the prosecution has miserably failed to prove any motive for the crime. The prosecution failed to prove that the deceased was having an ‘evil eye’ on the daughter of A-1. It failed to examine A-1’s daughter herself. The explanation offered by the trial Court as to why she could not be examined proceeds on surmises and conjectures. In a case of circumstantial evidence, where the other circumstances proved by the prosecution do not unerringly point to the guilt only of the accused, the

failure to prove the motive for the crime cannot be dispensed with as being insignificant.

16. We are, therefore, only left with the evidence of recovery of the *kulhari* at the instance of A-1. While this recovery, in the circumstances in which it took place from an open ditch 'hidden from view', does not inspire much confidence, it is not possible to conclude from this one circumstance that A-1 was "instrumental in the death of the deceased". With the other circumstances in the chain of which the recovery forms part, not having been proved beyond reasonable doubt, the proof of recovery of the *kulhari* by itself is not sufficient to bring home the guilt of A-1. In the considered view of the Court, the trial Court erred in holding that prosecution had proved the guilt of A-1 for the commission of the crime beyond reasonable doubt.

17. For all of the aforementioned reasons, the impugned judgment 28th March, 2001 and the order on sentence dated 29th March, 2001 of the trial Court are hereby set aside.

18. The bail bonds and surety bonds of the Appellant are hereby discharged. The SHO of the concerned PS will inform both the Appellant and her surety of this judgment.

19. The appeal is accordingly allowed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

DECEMBER 01, 2017/*rd*