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

+ **CRL.A. 64/2002**

SHAKUNTALA

..... Appellant

Through: None.

Versus

STATE

..... Respondent

Through: Ms.Radhika Kolluru, APP along with
Insp. Sunil Gupta, P.S. Anand Parbat

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

ORDER

30.11.2017

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1. This is an appeal against the judgment dated 27th November, 2001 of the learned Additional Sessions Judge in S.C.No.153/97 arising out FIR No.56/92 registered at P.S. Anand Parbat. The appeal is also directed against order on sentence by the judgment dated 27th November, 2001. The trial Court convicted the Appellant for the offence under Section 302 IPC, while acquitting the co-accused Ram Sharan Yadav. By the order on sentence of the same date, the Appellant has been sentenced to imprisonment for life and to pay a fine of Rs.2000/- and in default to undergo rigorous imprisonment for two months.

2. By an order dated 17th March 2004, this Court suspended the sentence subject to the Appellant furnishing a personal bond in the sum of Rs.20,000/- with two sureties in the sum of Rs.10,000/- each to the

satisfaction of the trial Court/ACMM. As on 14th November 2003, the Appellant had served 2 years 8 months and 18 days and earned remission of 6 months.

3. When the matter was called out, none appeared on behalf of the Appellant. The appeal has been shown in the Regular Board of this Bench for more than a month now. With the assistance of the learned APP appearing for the State, the Court has examined the impugned judgment and the record of the trial Court.

4. The case of the prosecution was that on 24th March, 1992 at 9:50 a.m. information was received from the Police Control Room that some quarrel was going on at House No.107, Gali No.13, Industrial Area, New Rohtak Road. When Constable Khem Raj reached the spot, he did not find any quarrel but found Onkar Sharma (deceased) lying dead in a room in the said house. When the dead body was inspected, abrasions were found on his neck and face and there were injuries on his right palm and on two fingers of his left hand. An FIR was registered. During investigation, the Appellant was arrested on 26th March, 1992. According to the prosecution on the basis of the disclosure statement of the Appellant, Ghanshyam Dass (who was initially arrayed as Accused No.3 A-3 and discharged on 8th June, 1998) was arrested. On the pointing out of the appellant, a kitchen knife was recovered. The blood stained clothes of the deceased were seized.

5. Statements were recorded of the mother-in-law of the appellant, Smt. Santosh (PW-29) and Urmila (PW-2), according to whom the Appellant and her tenant Ram Sharan Yadav (A-2) were having illicit relations. On 17th

April 1992, Ram Sharan Yadav (A-2) was arrested. He disclosed that on 3rd April, 1992 he had met the Appellant in the Central Jail. On the search of the office of A-2, a ladies' purse of the Appellant containing her photographs and some other papers were recovered.

6. In the charge sheet, the name of A-3 was kept in Column No.2 since no evidence could be gathered against him. This resulted in his discharge.

7. Many of the independent prosecution witnesses (PWs) and, in particular, PW-2 and PW-29 turned hostile. PW-4, Shri Kishan, a neighbour of the deceased, stated that while he was sleeping in his *jhuggi*. At around 9 p.m., on 23rd March 1992, he was woken up by his mother who told him that something had happened to the deceased who was also known as Pandit Ji. He went to the house of Pandit Ji. He found that 10-15 persons were already present and that Pandit Ji was lying on the ground. He along with one more person then called Dr. Anil (PW-5) who advised that Pandit Ji be taken to the hospital as his body was warm. Thereupon the Appellant and 2-3 persons took Pandit Ji to the hospital in the car of Dr. Anil. However, in the hospital they were informed that Pandit Ji had already died.

8. PW-4 then stated that on being asked by the Appellant, he went in search of the maternal uncle of the deceased but could not trace him. Even PW-4 was declared hostile by the APP. In his cross-examination by the APP, PW-4 stated he noticed Ghanshayam Dass (A-3) sitting in the house of Pandit Ji when he went there at 9 pm on 23rd March 1992 and that the Appellant had asked him to call the maternal uncle of the deceased.

9. Even the witnesses to the arrest (PW-6 Prabhu Dayal) and the illicit relationship between A-1 and A-2 (PW-20 and PW-24) turned hostile.

10. The case was one of circumstantial evidence. The prosecution, in order to explain the motive for the crime, sought to project that since the deceased was impotent there used to be frequent quarrels between him and the Appellant. It is alleged that the Appellant was having illicit relations with other persons. The recovery made at the instance of A-2 was put forth as proof of their illicit relationship.

11. The trial Court noticed that none of the witnesses in fact supported the case of the prosecution as regards the motive and yet the two factors that weighed with the trial Court were that the deceased was impotent and that the Appellant was, at the time of the death of the deceased, pregnant. Consequently, the trial Court found the argument of the APP in this regard to be “attractive”. The Court then turned to the post mortem report which categorically opined the cause of death to be strangulation. According to the trial Court, since no one else was present at the time of death of the deceased except the Appellant, it was for her to explain who had strangled the deceased. Although the trial Court does not explicitly say so, the basis of this conclusion was perhaps Section 106 of the Indian Evidence Act, 1872 (IEA). What appears, therefore, to have weighed with the trial Court was that since the deceased was present with the Appellant in their house immediately prior to his strangulation, the burden was on her to show how the deceased came to be strangled.

12. This is where this Court finds that there is a huge gap in the evidence of the prosecution. There is no clear and cogent evidence that it was the Appellant alone who was present with the deceased prior to his being strangled. The stand of the Appellant in her statement under Section 313 Cr PC is that she was not present when the deceased died; that she had gone out of the house and when she returned she found that something was wrong with her husband and she collected her neighbours.

13. As can be seen none of the PWs supported the case of the prosecution as regards the motive, viz., the alleged illicit relationship between the Appellant and the A-2. The trial Court acquitted A-2 and yet convicted the Appellant. As regards her presence in the house we only have the evidence of PW-4 but even he does not speak of the Appellant being the only one present with the deceased in their house prior to the occurrence. By the time he reached the spot, he noticed that there were already 10-15 persons there. He also noticed A-3 (who was ultimately discharged).

14. The trial Court does not appear to have taken note of the absence of any credible evidence as regards 'last seen' without which Section 106 IEA could not *ipso facto* be applied to place the burden on the Appellant to explain the death of her husband. The evidence that has come on record does not give the Court that assurance.

15. In a case of circumstantial evidence, the failure to prove the motive may not be significant if other evidence on record unerringly points to the guilt of the accused. This is not one such case. Clearly, there is no proof of the

motive for the crime. Coupled with this is the absence of any clear evidence that it was the Appellant alone, to the exclusion of anyone else, who was present with the deceased in the house prior to his death.

16. Since there is more than a reasonable doubt caused on a reading of the evidence regarding the guilt of the accused, she is entitled to the benefit of doubt in this regard. The Court is, therefore, not able to agree with the trial Court that the prosecution has, in this case, proved the guilt of the Appellant beyond reasonable doubt.

17. The appeal is accordingly allowed. The impugned judgment of the trial Court and the order on sentence of the trial Court are set aside.

18. The bail bonds of the Appellant and the surety bonds are discharged. The concerned SHO will inform the Appellant and the surety of this order.

S. MURALIDHAR, J.

I.S. MEHTA, J.

NOVEMBER 30, 2017
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