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

+ **CRL. A. 607/2012 & Crl. M.(B) No. 1934/2017**

SUBHASH KUMAR Appellant

Through: Ms. Saahila Lamba, Advocate.

versus

STATE NCT OF DELHI Respondent

Through: Ms.Kusum Dhalla, APP

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

ORDER

11.12.2017

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Dr. S. Muralidhar, J.:

1. This is an appeal against a judgment dated 9th April 2012 passed by the learned Additional Sessions Judge ('ASJ') in Sessions Case No.42/2011 arising out of FIR No.164/2011 registered at Police Station ('PS') Malviya Nagar convicting the Appellant for the offence under Section 302 IPC and the order of sentence dated 21st April 2012 sentencing the Appellant to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- and in default to undergo simple imprisonment for a period of one year.

2. The case of the prosecution is that the police was informed on phone on 24th April 2011 about the death of a woman at House No.197, Ground Floor, Savitri Nagar. Upon reaching the spot, the dead body was found in a decomposed condition lying in the room on the ground floor of the aforementioned house. The name of the deceased was revealed as Mumpy, wife of the Appellant who had married her three years earlier. The

whereabouts of the Appellant not being known, the DD No.24A dated 24th April 2011 was kept pending.

3. On 26th April 2011, the father of the deceased, Deedar Mandal (PW-6) gave a statement in which he stated that his daughter (the deceased) had been harassed and beaten by the Appellant in order to get more money from her parents. PW-6 stated that he had given the Appellant a gold chain and a gold ring. On the basis of the statement of PW 6, a case was registered under Sections 498A and 304B of IPC.

4. The case of the prosecution further was that on 9th May 2011, secret information was received about the arrival of the Appellant at Rajiv Chowk, Gurgaon. He was apprehended there on that day. According to the prosecution, upon interrogation, the Appellant made a disclosure and led the police to the place of the incident.

5. This was a case of circumstantial evidence. One of the key prosecution witnesses (PWs) who spoke of seeing the Appellant last with the deceased outside his rented room on 22nd April, 2011 at around 7 pm was Babu Lal (PW-9), the landlord. He was confronted, in his cross-examination, with the statement to the police where although he had mentioned the date on which he saw the Appellant with his wife outside the rented room as 22nd April, 2011, he did not mention 7 pm as the time when he so saw the Appellant.

6. The version of the appellant, as is plain from his statement under Section 313 Cr PC, is that after going to Gurgaon on work on the morning of 22nd April 2011, he went straightaway from there, without returning home, to

Katiyar Distt. in Bihar. His answer to Question No. 19 reads as under:

“Q.19 It is in evidence against you that at the aforesaid date, time and place your wife Mumpy was present in the rented accommodation. What have you to say?

A. I am not aware whether my wife was present in the room on 24th April 2011. I left for my duty in the morning on 22nd April 2011 for Gurgaon. There company Personal Manager (PM) had asked me to arrange the labour. I along with Tohit Abashi went to the house of Tohit Abashi at Katiyar District in Bihar. Company Manager had given me the amount of Rs. 20,000 for this. We had arranged the six labour and I asked Tohit Abashi to take them to Gurgaon. I will take the four labour from Jharkhand.”

7. It was sought to be urged by Ms. Saahila Lamba, the learned counsel for the Appellant, on the strength of the decision of the Division Bench of this Court dated 15th May, 2012 in CrI.A.No.1397/2010 (***Bhupender @ Kale v. State***) that this was a case where there was no evidence to show the presence of the husband in the house at the time of the death of the wife and in particular at the time when the crime was committed. Secondly, it was submitted that the post mortem report of Dr. Akhilesh Raj Jhamad (PW-1) dated 25th April, 2011 fixed the approximate time of death as 3 days prior thereto. Therefore, according to Ms. Lamba, the improvement made by the land lord that he saw the accused at 7 p.m. was critical as in the absence of the time at which he saw the Appellant it could not be said that it was the Appellant alone who was present in the house at the relevant time.

8. The relevant paragraph of the above decision delineating the four different categories of circumstantial evidence when a wife is found dead in her matrimonial house reads as under:

“29. If we examine the decisions of the Supreme Court on the point of death of a wife in her matrimonial house, we find that the decisions can be classified into undernoted 4 broad categories:-

I. In the first category fall the decisions where it is proved by the prosecution that the husband was present in the house when the wife suffered a homicidal death and rendered no explanation as to how his wife suffered the homicidal death. (See the decisions reported as *State of Rajasthan v Parthu* (2007) 12 SCC 754, *Amarsingh Munnasingh Suryavanshi v State of Maharashtra* AIR 2008 SC 479, *Ganeshlal v State of Maharashtra* (1992) 3 SCC 106, *Prabhudayal v State of Maharashtra* (1993) 3 SCC 573, *Dynaneshwar v State of Maharashtra* (2007) 10 SCC 445, *Trimukh Maroti Kirkan v State of Maharashtra* (2006) 10 SCC 681, *Bija v State of Haryana* (2008) 11 SCC 242 and *State of Tamil Nadu v Rajendran* (1999) 8 SCC 679).

II. In the second category are the decisions where the prosecution could not prove the presence of the husband in the house when the wife suffered a homicidal death but the circumstances were such that it could be reasonably inferred that the husband was in the house and the husband failed to render any satisfactory explanation as to how his wife suffered a homicidal death. The circumstances wherefrom it could be inferred that the husband was in the house would be proof that they lived in the house and used to cohabit there and the death took place in such hours of the night when a husband was expected to be in the house i.e. the hours between night time and early morning. (See the decisions reported as *State of UP v Dr Ravindra Prakash Mittal* (1992) 3 SCC 300 and *Narendra v State of Karnataka* (2009) 6 SCC 61).

III. In the third category would be proof of a very strong motive for the husband to murder his wife and proof of there being a reasonable probability of the husband being in the house and having an opportunity to commit the murder. In the decision

reported as *Udaipal Singh v State of UP (1972) 4SCC 142* the deceased wife died in her matrimonial home in a room where she and her husband used to reside together. The accused-husband had a very strong motive to murder the deceased which was evident from the letter written by him to his mistress, which letter clearly brought out the feeling of disgust which the accused had towards the deceased. The accused had the opportunity to commit the murder of the deceased as there was evidence to show the presence of the accused in the village where the house in which the deceased died was situated at the time of the death of the deceased. Noting the facts that the accused had a strong enough motive and an opportunity to murder the deceased, noting that there was no evidence that the appellant was seen in his house by anybody, the Supreme Court convicted the accused.

IV. In the fourth category are the decisions where the wife died in her matrimonial house but there was no evidence to show presence of the husband in the house at the time of the death of the wife and the time when the crime was committed was not of the kind contemplated by the decisions in category II and was of a kind when husbands are expected to be on their job and there was either no proof of motive or very weak motive being proved as in the decision reported as *Khatri Hemraj Amulakh v State of Gujarat AIR 1972 SC 922* and *State of Punjab Vs. Hari Kishan 1997 SCC Cri. 1211.*”

9. Ms. Lamba, the learned counsel appearing for the Appellant sought to bring the present case under category IV of the above passage.

10. There is, however, a difficulty in the present case. The first is that there is the last seen evidence. Although PW-9 might have in the statement to the police not mentioned the precise time when he saw the appellant, i.e., 7 p.m., nevertheless he was consistent on the material fact that he saw the Appellant outside the rented home along with his wife on 22nd April, 2011.

There is no evidence whatsoever that anyone else was seen entering the room thereafter.

11. This also has to be seen along with the statement of PW-9 which has remained unchallenged. PW-9 went to the room at around 4:30 p.m. on 23rd April, 2011. He found it room closed from outside. On 24th April, 2011 when he again went to the premises, he noticed a foul smell from the house and, thereafter when he pushed the door, he noticed the dead body of the wife of the Appellant. Therefore, the time of death being somewhere between 22nd April, 2011 and 23rd April, 2011 is consistent with the medical evidence in the form of PW-1 who conducted the post mortem.

12. The second difficulty with the submission of Ms. Lamba is that no explanation was offered by the Appellant as to how he did not contact his wife at all after he left for his duty on 22nd April, 2011 for Gurgaon. His plea of alibi, namely, that from Gurgaon, he had gone straight to Bihar to arrange for labour, although the burden to prove the alibi is on the accused. More importantly his conduct is most strange. This is evident from his answer to question No.46 which reads as under:

“Q.46 Can you explain your absence from 22nd April 2011 to 7th April 2011 or whether you had informed your wife stating that you had come on any particular date?

A. I had not informed my wife that I was going to Bihar for fetching labour. I was having the mobile number of my wife. I was also having mobile phone. I had left Tohit Abashi on 30th April 2011 and I left on 30th April 2011 for my native place at Jharkhand.”

13. It is indeed strange that despite having the mobile number of his wife,

he never informed his wife that he is going to Bihar. He made no enquiry whatsoever about his wife.

14. It has come from the mouth of the Appellant himself that he was arrested on 7th May, 2011 from Angwali at Jharkhand at about 4:30 p.m. along with the Peterwar local police and that he was taken to the Peterwar police station. He also led the evidence of S.I. Shachindra Jha (DW-2) to prove this. Interestingly, the trial Court has accepted the above evidence of DW-2 and returned a categorical finding that in the present case, the police had created a false record to show the arrest of the appellant from Gurgaon that does not detract from the fact that it was the Appellant who had to offer his explanation as to where he was between 22nd April, 2011 to 7th May, 2011 and how he made no attempt to contact his wife and what he did after learning of her death. These are questions that can be answered only by the Appellant.

15. In the absence of any convincing explanation offered by the appellant and there being a strong last seen evidence, the chain of circumstances, as noticed by the trial Court in the impugned judgment, should be taken to be complete qua the Appellant.

16. It was urged that with the acquittal of the Appellant for the offences under Sections 498A and 304B IPC, i.e. with the trial Court disbelieving that there was no dowry or cruelty to which the victim was subjected to and that there was no motive for the crime.

17. On this aspect, the Court is inclined to agree with the trial Court that

notwithstanding the acquittal of the Appellant for the offences under Sections 498A and 304B IPC, the circumstances delineated hereinabove, viz., , the Appellant was last seen with his wife, the deceased, on 22nd April, 2011. He, thereafter, absconded and was arrested only from his native place at Jharkhand on 7th May, 2011. There being nothing shown that the death was on account of any robbery or anything of that sort and that the conduct of the Appellant between the time of death of the deceased and his arrest giving rise to grave doubts about his version, the chain of circumstances which have been proved by the prosecution unerringly point to his culpability for the offence of murder of the deceased.

18. Consequently, the Court finds no ground having been made out for interference with the impugned judgment dated 9th April, 2012 or the order of sentence dated 21st April, 2012 passed by the trial Court. The appeal is accordingly dismissed along with the pending application.

S. MURALIDHAR, J

I.S. MEHTA, J

DECEMBER 11, 2017
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