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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 20th November, 2017

Decided on: 6th December, 2017

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CRL.A. 1351/2014 & CRL.MB 1921/2017

JALESHWAR MAJHI

...Appellant

Through: Mr. Jivesh Tiwari, Advocate.

versus

STATE

...Respondent

Through: Ms. Kusum Dhalla, APP for State

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE I.S. MEHTA

JUDGMENT

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06.12.2017

Dr. S. Muralidhar, J.:

1. This is an appeal against the judgment dated 5th June 2014 passed by the learned Additional Sessions Judge in Sessions Case No.42/14 arising out of FIR No.84/12 registered at Police Station (PS) Dwarka Sector-23, convicting the Appellant for the offence under Section 302 Indian Penal Code ('IPC') for murdering his wife Manju ('the deceased') and the order on sentence of the same date whereby the Appellant was sentenced to undergo rigorous imprisonment for life for the offence under Section 302 IPC and in addition, to pay a fine of Rs.5,000/- and in default of payment of fine, to undergo simple imprisonment for three months.

Background facts and police investigation

2. The facts of the case are that on 1st June 2012, at around 9.18 am, Ct. Ravinder Kumar (PW13) received a call from a mobile phone informing that at Sector-23 Dwarka, Pochanpur Village, near Gulab Dharam Kanta, one lady was lying in an unconscious condition. PW13 then filled a Police Control Room ('PCR') form (Ex. PW13/A). Head Constable ('HC') Ramjas (PW16) received a PCR call at around 9.45 am and recorded the same as DD No.13A (Ex.PW16/A) and received the rukka at 12.10 pm and on that basis registered the FIR No. 84/12.

3. Sub Inspector ('SI') Ram Pratap (PW18) attached to PS Dwarka Sector-23 and Ct. Radhey Shyam (PW12) reached the house where Braham Prakash Yadav (PW2), who happened to be the landlord, told them that he had constructed some rooms on his plot for letting out on rent. PW2 informed them that he had let out Room No.2 in his plot to one Jaleshwar Majhi (the Appellant). In said room, the Appellant was living with his wife (the deceased) and her daughter for the past one month. PW2 stated that on 1st June 2012, he came to the room at around 9 am to collect the rent but found the door bolted from outside. A foul smell was emanating from it. On opening the door, he found that a female who was residing with the Appellant was lying on the floor wrapped in a quilt. On reaching the spot, the police found the female dead. It is on this basis that the FIR was registered.

4. Inspector Sukhdev Singh Meena (PW20) was the Investigating Officer ('IO') of the case. He stated that when he went to the room, he found a dead

body of a female lying naked in a semi-decomposed state. Near the dead body, a sari, a petticoat, a bra, an underwear and a male undershirt were lying. The dead body had injuries marks on the forehead and on the private parts. Some kitchen items were also lying in said room. The articles lying in the kitchen were seized.

5. Apart from recording the statement of PW2, PW20 also recorded the statement of Mohd. Yunus (PW6) who was residing in Room No.1 with his 3 sons. PW6 drove a tempo for transporting marble. He stated that on 30th May 2012, the day when the marble market was closed due to a holiday, he was present in his room and at around 4 pm, he saw the Appellant along with his daughter, having a polythene bag in hand, leaving after bolting the door of the room. He further stated that on the following day, a foul smell emanated from the room and the landlord informed the police. PW20 also recorded the statements of the other police personnel. He then searched for the Appellant who was unable to be found. On the same day, the concerned Sub-divisional Magistrate was telephonically informed. The case property was seized and was deposited with the MHC(M).

6. On 2nd June 2012, PW20 along with PW18, Ct. Manoj (PW19), Ct. Kaptan and Ct. Ramesh proceeded to village Etwa Mahesia, PS Derni Bazar, Chapra, Bihar for locating the Appellant. There, they met his parents Charandeep Majhi and Radhika Devi who informed them that the Appellant had not come to the village. Thereafter, they went to the house of the deceased in the village Doriganj. There, they met the father and brother of the deceased, Jai Majhi (PW3) and Sujeet Majhi (PW4) respectively, and

informed them about her death. The two of them then accompanied the police to Delhi and joined the investigation. They were taken to the DDU Hospital mortuary where the Executive Magistrate, R.S. Rana (PW7), was also present. PWs 3 and 4 identified the dead body of the deceased as Manju.

Post-mortem report

7. The post-mortem on the body of the deceased was conducted by Dr. Komal Singh (PW8). Her report was report dated 5th June 2012 (Ex.PW8/A). She opined that the time since death was approximately six days prior thereto and the cause of death was hemorrhagic shock subsequent to multiple injuries inflicted by the second party. The injury to the liver was sufficient to kill a person in the ordinary course of nature. The injuries noted in the post-mortem report were as under:

“Body was highly putrefied. Body was swollen, greenish discoloration found all over, skin was peeled out at many places, moth larvae of one cm in length were crawling. Vagina and rectum were protruding out.

External Examination: External Injuries

1. Clean incised wound of size 3cm x 1 cm x bone deep present over the left side of forehead with bevelled margin.
2. Incised looking lacerated wound of size 2cm x 0.5cm x bone deep on the left parietal region.
3. Incised looking lacerated wound of size 3cm x 2cm x bone deep present on the left side of face with over the ramous of mandible on left side.
4. Bruise of size 5cm x1cm present on the inner aspect of left palm.
5. Bruise of size 3cm x1cm present on the inner surface of right hand.

6. Bruise of size 7cm x 4cm present over the upper abdomen on the right side with reddish brown in colour.
7. Bruise of size 6cm x 2cm present on lateral aspect of left arm.
8. Bruise of size 3cm x 2cm present on the outer aspect of left forearm.
9. Lacerated wound at the vulva and perineum of size 4cm x 1cm x muscle deep.
10. Bruise of size 6cm x 4cm lower anterior aspect of left thigh.
11. Bruise of size 5cm x 3cm anterior aspect of left leg.
12. Bruise of size 4cm x 3cm on medial aspect of right lower leg.
13. Bruise of size 4cm x 3cm on right thigh.
14. Bruise at the right hypochondrium appr. 4cm x 3.4 cm.”

8. All the injuries were opined to be ante-mortem in nature and of the same duration. The death was opined to be homicidal.

Arrest of the Appellant

9. On 5th June 2012, based on the information of a secret informer that the Appellant would be coming to the rear side of the Sector-20 Marble Market, a team led by PW20 apprehended the Appellant. Pursuant to the disclosure statement of the Appellant, a black coloured pant, a dark green coloured t-shirt and a *gamcha* from the bushes behind Nilkant Gas Agency were recovered. He also pointed out to the place of occurrence.

10. On the following day, the Appellant was taken to Baddi, District Solan, Himachal Pradesh (HP) where he had dropped his daughter in the house of his brother, Muneshwer Majhi (PW5). The daughter, who was merely six months old, was found there. The statement of PW5 was also recorded. He informed the police that the Appellant had, after murdering his wife, brought

the child to him and thereafter, went away.

Statement under Section 313 Cr PC

11. A charge-sheet was filed upon the conclusion of investigations. Twenty prosecution witnesses were examined. In his statement under Section 313 Code of Criminal Procedure ('Cr PC'), the Appellant was specifically asked whether he had anything to say in regard to the depositions of PW3 and PW4 that he had demanded a bicycle and utensils from his wife. The Appellant denied it and claimed that he had "never demanded any dowry either from her or her parents." The Appellant denied being a tenant of PW2 or that he occupied Room No.2 on PW2's property. As regards visiting his brother PW5 at Baddi, HP, the Appellant stated that he had been taken to HP by the police and did not go there of his own accord. He denied telling PW5 that his wife had run away with a boy. The Appellant denied most of all the other above circumstances and maintained that he was arrested from Sector-8, Dwarka; that he was made to sign on some documents written by the police and that nothing was recovered at his instance. He further stated:

"I am innocent. I have been falsely implicated in the present case. When I came to Delhi, along with my wife, Manju and minor daughter, I started to reside at Shahbad near Railway Fatak. The owner of the said house in which I used to reside was owned by one Pramod. I along with my family never resided at the house of Brahm Prakash Yadav. Nor I occupied the room in which dead body of my wife was found. My wife had already left the matrimonial house of her own and I was searching her. I went to the police station Sector 23 Dwarka for lodging her missing report but I was told by the police that I should search for my wife on my own. On the date of arrest, I was informed by the police that they have found dead body of my wife. However, I can say that I have not murdered my wife

and I have been falsely implicated by the Police in this case.”

12. No defence witness was examined by the Appellant.

Trial court's analysis of the circumstantial evidence

13. The instant case was one of circumstantial evidence. The circumstances, as noted by the trial court, were as under:

- a) Homicidal death of Manju, wife of the accused.
- b) The accused and the deceased Manju were living together in the room from where the dead body of Manju was found.
- c) The accused was seen leaving the room along with his daughter on 30th May 2012.
- d) Conduct of the accused to go the house of his brother at Baddi, District Solan, HP and leaving his daughter in custody of his brother.

14. The trial court then proceeded to discuss each of the circumstances. As far as the first circumstance was concerned, the trial court noted that PW8 had not been cross-examined to challenge her opinion that the death of the deceased was homicidal. PW8 had also opined that the injuries such as the clean incised wound of size 3cm x 1cm x bone deep present over the left side of forehead with bevelled margin, incised looking lacerated wound of size 3cm x 2cm x bone deep present on the left side of face with over the ramous of mandible of left side and lacerated wound at the vulva and perineum of size 4cm x 1cm x muscle deep were possibly inflicted by a frying pan (black *tawa*), which incidentally was also seized. It was further proved that she died of multiple injuries on or around 30th May 2012.

15. While considering the second circumstance, of the Appellant and the deceased living together in the room from where the dead body was found, the trial court referred to the evidence of PW2, who had named the Appellant as his tenant. It was noted that there was no cross-examination of PW2 on this aspect. Further, PW6 also noticed the Appellant leaving with his daughter on 30th May 2012 at around 4 pm with a polythene bag in hand and bolting the door of the room from the outside. The defence of the Appellant was that he was living in Shahbad, near the railway *phatak*, in the property of one Pramod was found to be unsubstantiated. Neither were the particulars of said place given nor were the complete particulars of the owner of that property disclosed. Consequently, the second circumstance is also held to be totally proved beyond doubt.

16. As for the evidence of 'last seen', the trial Court referred to the testimony of PW6 who was residing in Room No.1 of the same property where the body was found. He remained unshaken in his cross-examination. There was no need for him to falsely implicate the Appellant. The evidence of PW5 was referred to with regard to the conduct of the Appellant after the incident.

17. As regards the argument of the defence that the motive was unable to be proved, the trial court referred to the decision of the Supreme Court in ***Subedar Tewari v. State of U.P. AIR 1989 SC 733*** wherein it was held that where the other circumstances were sufficient to point to the guilt of the accused then the mere absence of proof of motive would not prove fatal to the prosecution case.

Counsel's submissions

18. This Court has heard the submissions of Mr. Jivesh Tiwari, learned counsel appearing for the Appellant, and Ms. Kusum Dhalla, learned APP for the State, and has been taken through the evidence on record.

19. It was argued that the circumstances from which the guilt of the Appellant was sought to be established could not be said to be conclusive or so complete as to not leave any reasonable doubt for any conclusion consistent with the innocence of the Appellant. There was no evidence placed on the record that showed that PW20 had visited the villages of the deceased or of the Appellant in Bihar. There were no departure or arrival entries. Further, the motive attributed to the Appellant by PW3 that the former had demanded dowry from the deceased was not substantiated, particularly since he did not complain about it to any of his relatives or to the police or even to the SDM (PW7), who recorded his statement. Even PW4, who was the brother of the deceased, was a tutored witness.

20. It was submitted that according to PW6, the date on which the Appellant was last seen was 30th May 2012. The Appellant was seen locking the room from outside at around 4 pm. However, according to PW2, the incident must have taken place only on 31st May 2012. It was further pointed out that there was no explanation for the fact that although nineteen bruises were found on the body of the victim, the head was left untouched. It was also pointed out that PW5, the brother of the Appellant, had in fact turned hostile. The defence also pointed out that there were no blood stains on the clothes recovered at the instance of the Appellant after his arrest, the weapon of

offence was not recovered and the motive was not proved.

21. The learned APP, on the other hand, supported the impugned judgment of the trial court and pointed out that the circumstances highlighted by the trial court were in fact proved beyond reasonable doubt.

Analysis and reasons

22. The Court proposes to first discuss the circumstance of the death of the deceased being homicidal. The defence sought to establish a doubt about when the death occurred (30th May or 31st May) by pointing to the statement of PW8, who compiled the post-mortem report dated 5th June 2012, wherein it is stated that the death must have occurred around six days prior to the date of the examination. However, it is seen that in her cross-examination, PW8 clarified that “it is difficult to tell the exact time of death by mere degree of putrefaction”. The death having been caused by a frying pan (black *tawa*), when asked whether in terms of the nature of injuries 1, 3 and 9, the blood stains should have been on the outer side of the frying pan and not in the middle, she replied as under:

“The injuries no.1,3 &9 were caused by the same Frying Pan and it is not necessary that after the infliction of the injuries by the same will result in staining the margins of the Frying Pan.”

23. In the considered view of the Court, the evidence of PW8 lends assurance of the death being homicidal. More importantly, the injury to the liver, as noted in the post-mortem report, was by itself sufficient to cause death. It was also clear that the frying pan recovered from the spot was used to cause many of the serious injuries on the person of the deceased.

24. As regards the evidence of 'last seen', the Court has carefully perused the depositions of the landlord (PW2) as well as the tenant in the neighbouring Room No.1, Mohd. Yunus (PW6). Both witnesses have supported the case of the prosecution. They were strangers to the Appellant and need not have falsely implicated him.

25. PW2 maintained that when he went to collect the rent on the morning of 1st June 2012, he noticed that the room was bolted from outside and a foul smell was emanating from inside the room. When he opened the door of the room, he found a semi-clad woman was lying on the floor and she was covered with a quilt on her chest part and thereafter, he called the police. He spoke about the police seizing the iron *tawa* and other articles, including the clothes found at the spot. He identified these articles as the case property in the Court. His cross-examination was minimal. He maintained that in one room the Appellant was staying and in the other room PW6 was staying. This witness has fully supported the case of the prosecution and was unable to be shaken. The Appellant's denial of the fact that he stayed in any room rented by PW2 and his claim to the contrary that he was living in a house owned by one Pramod at Shahbad, near the railway *phatak* was unable to be substantiated by him by leading any evidence.

26. Turning to the evidence of PW6, he again has not been seriously challenged in his cross-examination. Feeble attempts were made to question him about his eyesight which had been weak in the past one year. His job was to deliver marble in his tempo in different parts and his room was only

about one and a half kilometres from the marble market. He got his tempo repaired on that day, i.e. 30th May 2012, which was a Wednesday and on which date the marble market was closed. Therefore, he could explain his presence in the room from 2 pm to 9 pm. There was absolutely nothing in his evidence which could cause any doubt about its veracity.

27. Consequently, the Court is satisfied that the prosecution has been able to prove the 'last seen' evidence, namely, that PW6 last noticed the Appellant leaving with his daughter at 4 pm on 30th May 2012 after bolting Room No.2 from the outside and PW2 finding, on 1st June 2012, upon opening the door, the dead body of the deceased. This neatly ties up with the second circumstance of last seen against the Appellant.

28. As regards the conduct of the Appellant after the incident, while it is true that PW5 has not supported the case of the prosecution in the limited context of the Appellant making an extra-judicial confession to him about killing the deceased, in his cross-examination, he did say that the Appellant had come to Baddi, District Solan, Himachal Pradesh to leave his daughter with PW5 and at that time he had informed PW5 that his wife had run away with some boy. The case of the Appellant that he never went to Himachal Pradesh of his own to leave his daughter with his brother and that it was the police who took him to Himachal Pradesh is falsified. Even though PW5 may not have supported the prosecution case regarding any extra-judicial confession being made to him, it is evident that he did not support the Appellant either. This, therefore, proved the conduct of the Appellant about taking his daughter and leaving her with PW5 in HP after the death of his wife.

29. As rightly pointed out by the trial court, while the motive has not been able to be proved, as long as the evidence on the record points unerringly to the guilt of the accused, the failure to prove the motive for the crime would not by itself be fatal to the case of the prosecution. In *State of U.P. v. Kishanpal (2008) 16 SCC 73* it was held as under:

"The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction."

30. In this context, the following observations of the Supreme Court in *Suresh Chandra Bahri v. State of Bihar AIR 1994 SC 2420* are also relevant:

"A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention. In a case where there is clear proof of motive for the commission of the crime it affords added support to the finding of the court that the accused was guilty of the offence charged with. But it has to be remembered that the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of the crime."

"It is difficult to lay down a hard and fast rule as to how and in what manner a person would react and to achieve his motive could go to what extent in the commission of crime under a particular circumstance. It is not possible to measure up the extent of his feelings, sentiments and desire and say as to what compelled him to commit a particular crime. There may be persons who under frustration and on mere trifling domestic matters take decision to commit a serious crime, while others may approach it with cool and calm mind and think more dispassionately before taking any hazardous and serious steps. It all depends as to how a person reacts in a given circumstance and it is he alone who best knows his intention and motive to commit a crime and the extent thereof."

31. For all of the aforementioned reasons, the Court finds that no grounds have been made out for interference with the impugned judgment and the order on sentence of the trial court.

32. The appeal is accordingly dismissed. The pending application is also dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

DECEMBER 06, 2017

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