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

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Date of Decision: 08.01.2018

% **CRL.A. 19/2013**

FEROZ

..... Appellant

Through: Mr. K. Singhal, Advocate.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Rajat Katyal, APP for the State.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P. S. TEJI

VIPIN SANGHI, J. (ORAL)

1. The appellant has preferred the present appeal to assail the judgment dated 06.10.2012 passed by the learned ASJ (Central), Delhi in SC No.07/2011 arising out of FIR No.158/2010 registered at PS – Ranjeet Nagar under Section 498A/ 302/ 34 IPC, whereby the appellant has been convicted under Section 302 IPC for commission of murder of his wife. At the same time, the appellant was acquitted of offence under Section 498A IPC. By the order on sentence dated 06.10.2012, the appellant has been sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/-, or in default of payment of fine, he is directed to undergo further Rigorous Imprisonment for two months for the offence under Section 302 IPC.

2. Apart from the appellant, his mother Mehrunisha had also been similarly charged. However, she had been acquitted by the Trial Court of all the charges.

3. The facts in brief are that on the night of 11/12.08.2010, while the appellant and his deceased wife were, admittedly, sleeping in their room at their jhuggi situated at E-802, Jhuggi, Shadipur Flyover, K.D. Colony, Delhi, the deceased died an unnatural death. The medical opinion of Dr. Komal Singh (PW-8) is that as per the post-mortem, the death appeared due to homicidal hanging. The post-mortem report (Ex. PW-8/A) showed several bruises and abrasions on the body of the deceased. As per the post-mortem report (Ex. PW-8/A), inter alia, the following findings were reported:

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- *Ligature mark present on the anterior aspect of the neck, above the thyroid cartilage going obliquely on the right side of the neck upto the posterior hair line and on left side went horizontally upto the left mastoid process.*
- *Total circumference of neck is 30cm, the ligature mark of size 23cm x 1cm in the form of groove reddish black in colour, 5cm below from the base of chin, 13 cm above from m. Sternii, 8cm of left, 5cm from chin, 5cm below from right Mastoid and 8cm below from left mastoid.*

EXTERNAL EXAMINATION: External Injuries

1. *Bruise present over the upper left side of the arm on its lateral aspect, size 3.2cm x 1.4cm oval in shape under near collection of clotted blood dark reddish black in colour.*

2. *Pressure abrasion present on the right upper chest of size 2cm x 1.4cm dark reddish black in colour in regular in shape.*
3. *Bruise present on the anterior aspect of right shoulder joint of size 2cm x 0.8cm under near collection of clotted blood dark reddish black in colour.”*

4. The Trial Court, while convicting the appellant, placed the onus upon him – by resort to Section 106 of the Evidence Act, to explain the circumstances in which his wife had died. The Trial Court held that the appellant had failed to explain the circumstances in which the death of his wife had taken place. The defence of the accused/ appellant that the death of his wife was on account of suicidal hanging was not probablised.

5. In the aforesaid background, after some arguments, learned counsel for the petitioner, on instructions, has restricted his submissions to submit that even if the death of the deceased was homicidal, the case would be covered by the *fourth* exception to Section 300 IPC and, consequently, the appellant was liable to be convicted under Section 304 Part-I or Part-II, and not under Section 302 IPC.

6. The submission of Mr. Singhal is that since the appellant stands acquitted under Section 498A IPC, and the said finding has attained finality – as no leave petition was preferred by the State or by any of the relatives of the deceased, no motive has been proved against the appellant for commission of the murder of the deceased. It was not the prosecution’s case that the appellant had any other extra-marital affair, nor any other motive was established before the Trial Court. He submits that, at the highest, the evidence brought on record probablises the theory that there is a quarrel

between the appellant and his wife, and without any pre-meditation, on account of a sudden fight in the heat of passion, the death of the deceased was caused.

7. Mr. Singhal submits that the prosecution has failed to bring on record any independent evidence of the intentional killing of the deceased by the appellant. He, therefore, submits that the present case should be treated as one falling under Part-II of Section 304 IPC.

8. In support of his submissions, Mr. Singhal has placed reliance on ***K. Ravi Kumar Vs. State of Karnataka***, (2015) 2 SCC 638. This too was a case where the wife of the accused was found dead at her matrimonial home. The couple had been married for nine years and had two children. While giving the benefit of Exception IV to Section 300 IPC to the appellant, the Supreme Court observed:

*“16. Keeping in view the approach of this Court for giving benefit of Exception 4 to Section 300 IPC in cases mentioned above and applying the same to the facts of this case, we are inclined to give benefit of Exception 4 to Section 300 IPC to the appellant by altering his sentence awarded to the appellant punishable under Section 304 Part II IPC. This we say so in the facts of this case for more than one reason. **Firstly, even according to the prosecution, there was no premeditation in the commission of crime. Secondly, there is not even a suggestion or we may say conclusive evidence that the appellant had any predetermined motive or enmity to commit the offence against the deceased leave alone a serious offence like murder. Thirdly, incident that occurred was due to sudden quarrel which ensued between the appellant-accused and the deceased Padma on the issue of going to Village Mandya to see the appellant's ailing father. The appellant, on receiving this news, had become upset and, therefore, his***

*insistence to see his ailing father immediately was natural and at the same time, Padma's refusal to leave could lead to heated exchange of words between them. True, it is that it reached to its extreme inasmuch as the appellant in heated exchange of words lost his mental balance and poured kerosene on Padma setting her to burn. However, the fact remains that it was an outcome of sudden outburst and heated exchange with no predetermined motive per se to kill her. **Fourthly, no conclusive evidence was adduced by the prosecution to prove any kind of constant quarrel ever ensued in the last 9 long years between the couple and that too for a cause known to others which could lead to killing Padma or whether any unsuccessful attempt was ever made by the appellant to kill her in past and lastly, we have not been able to see from the post-mortem report that any stab injury on Padma's body was caused nor was prosecution able to prove that any bloodstained knife from the place of occurrence was recovered at the instance of the appellant or of any witness.***"
(emphasis supplied)

9. In the present case, the couple had been married for three years and they had a daughter, who was a little over a year old at the time of demise of the deceased. She was also pregnant with a fetus of four months. No motive for the commission of the offence of murder was proved. Apart from the fatal homicidal hanging, no incise wound or cut was found on the body of the deceased, and all that was found were bruises and abrasions, which are likely to result in the eventuality of beating.

10. Reliance has also been placed on the decision of the Supreme Court in *Devendra Nath Srivastava Vs. State of U.P.*, CrI. Appeal No.87/2008 decided on 06.04.2017. In this case, the death of the deceased-wife took place at the hands of the appellant-husband and the autopsy report disclosed the following injuries on the body of the deceased:

“(1) Lacerated wound 5 cm x 4 cm x bone deep on back of left ear. Clotted blood seen in the wound.

(2) Multiple red contusion in area of 10 cm x 8 cm on left side of face.

(3) Lacerated wound 3 cm x 1 cm x bone deep just below the left mandible and 2.5 cm on left to the chin. Clotted blood seen in the wound.

(4) Lacerated wound 1.5 cm x .5 cm x bone deep on the chin surrounded by red contusion in the area of 4 cm x 3 cm.

(5) Lacerated wound 2 cm x 1 cm x muscle deep on right side of forehead adjacent to the right eyebrow. Blood clots seen in the wound.

(6) Incised wound 6 cm x 1 cm x muscle deep on left side of neck 7 cm below the left ear.

(7) Red contusion 5 cm x 3 cm across the trachea on the front of neck.

(8) Red contusion with abrasion in the area of 13 cm x 5 cm along right collar bone.

(9) Red contusion with abrasion 3 cm x 2 cm on top of left shoulder joint.”

11. The Medical Officer opined that the deceased had died of strangulation. The couple had a strained relationship. There were also allegations of previous cruelty upon the husband by the wife. The Supreme Court held on the basis of the evidence on record that the appellant had caused the homicidal death of his wife after quarrel between the two. The Supreme Court also observed that the appellant acted in a fit of anger. There was no evidence to show that the appellant had any extra-marital affair. Consequently, the Supreme Court in paragraph 18 held as follows:

“18. As to whether the act on the part of the appellant constitutes the offence punishable under Section 302 IPC or Section 304 Part I IPC, we are of the view that the incident has occurred after quarrel between the appellant and the deceased which is not a planned act. It is also established that the appellant was a drunkard. In our opinion, in the facts and circumstances of the case, the view taken by the High Court, that the appellant has committed offence punishable under Section 304 Part I IPC, requires no interference.”

12. The Supreme Court also placed reliance on its earlier decision in ***State of Andhra Pradesh Vs. Rauavarapu Punneya & Another***, 1977 1 SCR 601.

13. Reliance has also been placed on the decision of a Division Bench of the Rajasthan High Court in ***Hari Ram Vs. State of Rajasthan***, D.B. CrI. Appeal No.491/2009 decided on 09.01.2017. This too was a case of homicidal death of the wife at her matrimonial home at the hands of the husband. In this case too, the appellant was given the benefit of Exception IV of Section 304 IPC. The Division Bench, inter alia, observed:

“It is also observed that it is not a case of demand of dowry, but it is a case in which presumption is required to be drawn against the accused appellant under Section 106 of Evidence Act because the case is based upon circumstantial evidence and accused and victim only were persons present at the place of incident. Therefore, burden lies on the accused to give explanation in order to absolve him from suspicion. After due consideration of entire evidence, there is no doubt in this case that there is no direct evidence to connect the accused appellant with the crime. The only evidence is that the accused appellant and the deceased were residing together in a room as husband and wife, where the dead body of Manju was found. It also emerges from the record that a dispute was going on in between the family of accused appellant as well as

*deceased because the marriage of sister of appellant was solemnized with Sayara Ram (brother of deceased, with whom Smt. Shanti was not willing to reside), and deceased was married with accused appellant, in "Aata-Sata" and due to said reason which is not even investigated into by the investigating agency, that Shanti (sister of appellant) was residing with her parents and accused appellant. **Therefore, the relation of both the families was not cordial.** But upon perusal of the statement of PW.8, Naju (mother of deceased), it is obvious that there was no doubt expressed by PW.8 against the accused appellant and the only statement is given by her that Shanti, wife of his son, was residing from last two years with her parents without any reason and behaviour of in-laws of her daughter, was not good with her. In the cross-examination also, it is stated by PW.8, Naju, that efforts were made by her for taking back Shanti to her matrimonial home, to which she was agreeable.*

*We have minutely considered the entire evidence coupled with the arguments of learned counsel for the appellant with regard to incident. **Upon assessment of entire evidence, it is obvious that there was no demand of dowry and there is no specific allegation against the accused appellant with regard to his behaviour with deceased, Manju, since his marriage. The only allegation is that there was quarrel in between the families because Shanti, sister of accused appellant was not ready to go with Sayara Ram, brother of deceased.** It is also true that in the statements recorded under Section 313 Cr.P.C., the accused appellant took a plea that he was out from village Bhanwari on the date of incident and went to Sumerpur to meet his relative, but the learned trial court while drawing presumption u/s 106 of the Evidence Act, held the accused appellant guilty because the appellant as well as Smt. Manju, were residing together in the room.*

In our opinion, there is no doubt that presumption can be drawn against the accused appellant under Section 106 of Evidence Act if husband wife were residing in a room and wife was found dead in the morning. Therefore, we hold that

there is evidence on record with regard to incident occurred in the room, where dead of Smt. Manju was found and in that room accused appellant and deceased were residing but at the same time, we cannot lose sight of the fact that there is no evidence on record with regard to ill-treatment being meted out to the deceased by the appellant since his marriage. Furthermore, from the wedlock of accused appellant and deceased, one son was born and they were residing happily and there is no evidence of any motive.

The basic requirement to convict an accused for offence u/s 302 of IPC is that there must be motive/intention to kill any person and in absence of “motive”, obviously the case squarely falls within the exception 4 of Section 300 of IPC. We have considered the argument of learned counsel for the appellant in this regard and after overall assessment, we are of the opinion that in absence of evidence of motive, it cannot be said the finding of learned trial court which is based upon presumption drawn u/s 106 of the Evidence Act, for committing offence u/s 302 of IPC by the accused appellant, is sustainable in law.

As per verdict of Hon’ble Apex Court even if the evidence of eye witness is on record and it is found that incident took place in a spur of moment or without premeditation and no conclusive evidence of pre-determined motive or enmity, then accused cannot be convicted for offence u/s 302 of IPC. In the case of in the case of K. Ravi Kumar (supra), the Hon’ble Apex Court while following various judgments held that accused appellant is entitled for benefit of exception 4 of Section 300 of IPC if prosecution has failed to lead evidence to prove the motive for committing offence of murder. The Hon’ble Apex Court in the case of K. Ravi Kumar (supra) held as under: -

“14. Keeping in view the approach of this Court for giving benefit of Exception 4 to Section 300 IPC in cases mentioned above and applying the same to the facts of this case, we are inclined to

give benefit of Exception 4 to Section 300 IPC to the appellant by altering his sentence awarded to the appellant punishable under Section 304 Part II IPC. This we say so in the facts of this case for more than one reason. Firstly, even according to the prosecution, there was no premeditation in the commission of crime. Secondly, there is not even a suggestion or we may say conclusive evidence that the appellant had any pre-determined motive or enmity to commit the offence against the deceased leave alone a serious offence like murder. Thirdly, incident that occurred was due to sudden quarrel which ensued between the appellant-accused and the deceased-Padma on the issue of going to village Mandya to see the ailing appellant's father. The appellant, on receiving this news, had become upset and, therefore, his insistence to see his ailing father immediately was natural and at the same time, Padma's refusal to leave could lead to heated exchange of words between them. True, it is that it reached to its extreme inasmuch as the appellant in heated exchange of words lost his mental balance and poured kerosene on Padma setting her to burn. However, the fact remains that it was an outcome of sudden outburst and heated exchange with no predetermined motive per se to kill her. Fourthly, no conclusive evidence was adduced by the prosecution to prove any kind of constant quarrel ever ensued in the last 9 long years between the couple and that too for a cause known to others which could lead to killing Padma or whether any unsuccessful attempt was ever made by the appellant to kill her in past and lastly, we have not been able to see from the post-mortem report that any stab injury on Padma's body was caused nor prosecution was able to prove that any blood stained knife from the place of occurrence

was recovered at the instance of the appellant or of any witness.

15. In the light of the aforementioned reasons, which, in our opinion, emerge from the evidence on record, we are of the considered view that these reasons are sufficient to give benefit of Exception 4 to Section 300 IPC to the appellant and enables the Court to hold that the offence in question was not murder but it was an offence of culpable homicide not amounting to murder as specified in Exception 4 to Section 300 and hence punishable under Section 304 part II IPC

16. In the result, we allow the appeal but only to the extent that instead of Section 302 IPC, the appellant shall stand convicted for the offence of culpable homicide not amounting to murder punishable under Section 304 Part II IPC and accordingly sentenced to undergo rigorous imprisonment for a period of 10 years. The conviction and sentence imposed under Section 498-Aas also the fine imposed upon the appellant and the default sentence awarded to him shall remain unaltered which shall run concurrently.

17. The appeal is accordingly disposed of in above terms in modification of the orders passed by the courts below.”

Upon consideration of evidence of this case, we are of the opinion that it is a fit case to give benefit of exception 4 of Section 300 of IPC to the accused appellant on the ground that even according to prosecution case, there was no pre-meditation in commission of crime; and secondly, there is not even a suggestion or we may say conclusive evidence that the appellant had any predetermined motive or enmity to commit the offence against the deceased leave alone a serious offence like murder. Thirdly, no conclusive evidence is adduced by the

prosecution to prove any kind of constant quarrel ever ensued since marriage between the couple and that too for a cause known to others, which could lead to killing Manju or whether any unsuccessful attempt was ever made by the appellant to kill her in past.” (emphasis supplied)

14. When the facts of the present case are appreciated in the light of the aforesaid rulings, we find that in the present case the conviction of the appellant under Section 302 IPC cannot be sustained. It is clearly established that the death of the deceased was homicidal. It is evident that it is the appellant who is responsible for the same. He has not been able to discharge the presumption against him cast by Section 106 of the Evidence Act. He has not probablised his defence that the hanging of the deceased was suicidal. The death of the deceased took place in the dead of the night when, admittedly, the appellant was with the deceased. The other injuries found on the body of the deceased also establish that the death of the deceased was preceeded by quarrel and violence inasmuch, as, there were several injuries found on the body of the deceased, which were ante-mortem.

15. At the same time, since no motive has been found for the appellant to have murdered his wife, the appellant, in our view, is entitled to the benefit of Exception IV to Section 300 IPC. It appears to us that the appellant caused the death of the deceased without pre-meditation in a sudden fight or a sudden quarrel, and in the heat of passion. The death was caused by hanging and no specific weapon was used which, if used, would have indicated pre-meditation on the part of the appellant to commit the murder of his wife. The prosecution has not established that the rope used in hanging was arranged by the appellant as per plan.

16. In these circumstances, we set aside the conviction of the appellant under Section 302 IPC. At the same time, he is liable to be convicted under Section 304 Part-I IPC in view of the decisions taken note of hereinabove and the facts of the present case.

17. The nominal roll on record dated 28.09.2016 shows that the appellant had undergone, as on 27.09.2016, a sentence of 6 years and 29 days, apart from earning remission of 1 year, 4 months and 25 days. The record shows that the sentence of the appellant was suspended for a period of 1 month vide order dated 20.02.2017. It was again suspended for a period of 10 days vide order dated 13.11.2017. Thus, the appellant would have undergone a sentence of more than 7 years and 3 months, and have earned remission of 1 year and 7-8 months as on date.

18. The record shows that the daughter of the appellant, who is now about 9 years, is suffering from kidney stones and has to be operated upon for the same.

19. Considering all the aforesaid circumstances, we sentence the appellant to the period already undergone. The appellant is directed to be released forthwith, if not required in any other case.

VIPIN SANGHI, J

P.S.TEJI, J

JANUARY 08, 2017

B.S. Rohella