

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

% ***Date of Decision: April 07, 2018***

+ **CRL.A. 20/2014**

RAJESH @ SUDAMA Appellant

Through: Mr.Ajay Verma and Ms.Sudha Reddy,
Advocates

versus

STATE Respondent

Through: Ms.Aashaa Tiwari, Additional Public
Prosecutor with Insp.Vipin Kumar and SI
Ramesh Kumar, PS Sultan Puri

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

(ORAL)

SUNIL GAUR, J.

1. Impugned judgment of 4th October, 2013 holds appellant guilty of the offence of murdering his wife with a knife at his house in the afternoon of 28th August, 2012. Vide impugned order of 19th October, 2013, appellant has been sentenced to rigorous imprisonment for life with fine of ₹10,000/- for the offence under Section 302 of IPC and in default of payment of fine, it has been directed by Trial Court that appellant shall undergo simple imprisonment for a period of one month. *Rishi (PW-13)* is the first informant, at whose instance, the police machinery was set into motion in respect of the incident in question. The version of the first informant-*Rishi* as noticed in the impugned judgment is as under:-

“Rishi Pal informed the police that on 28.8.2012 at about 2:30 PM he was present at his house along with his mother and younger brother Shashi. He further informed

the police that Rajesh @ Sudama along his wife Manju were residing on the first floor portion of his house for the last four months and there used to be frequent quarrels between Rajesh and his wife on the issue of child. He told the police that at about 2:45 PM there was a quarrel between Rajesh @ Sudama and his wife Manju but he did not go upstairs to intervene since it was a daily affair. According to Rishi Pal, thereafter they heard the screams of Manju on which he came out of his room and saw that Rajesh smeared with blood and was holding a blood stained knife in his hand, was coming downstairs on which he along with his mother and younger brother apprehended Rajesh who told them that he had committed the murder of his wife Manju. Rishi Pal further informed the police that he went to first floor portion where he saw the dead body of Manju lying in a pool of blood on which he made a call at 100 number.”

2. Although prosecution has relied upon evidence of 25 witnesses but the material evidence is of first informant-Rishi (PW-13), his brother-Shashi (PW-16) and their mother-Smt.Chandrani (PW-21), who were landlords of appellant and were residing on ground floor of their house and appellant with his wife was residing on the first floor in the said house. Apart from their evidence, there is deposition of Smt.Munni (PW-22), who is sister of the deceased, on the motive aspect. As per the medical evidence on record, deceased had suffered 8 injuries and out of them, injury No.7 on the chest of the deceased proved to be fatal. Appellant had also suffered simple incised injury on right thigh and on his left forearm which according to medical opinion, could be self-inflicted. As per the scientific evidence, human blood of Group ‘O’ was detected on the weapon of offence i.e. the knife, which was seized from appellant when he was arrested on the spot. Insp.Ram Kishore (PW-25) was the Investigating Officer of this case. The crux of

prosecution evidence is recapitulated by Trial Court in paragraph 64 of the impugned judgment which needs no reproduction. Appellant in his statement under Section 313 of Cr.P.C. has denied the prosecution case and has stated that he has been falsely implicated in this case at the instance of parents of the deceased. No defence evidence has been led. Trial Court while relying upon the evidence of the aforesaid material witnesses has proceeded to convict and sentence appellant as already noted above.

3. To assail appellant's conviction, learned counsel for appellant contends that fingerprints on the recovered knife were not taken by the police and to submit so, attention of this Court is drawn to the evidence of *Insp.Ram Kishore (PW-25)* who has stated in his cross-examination that he had not lifted any chance prints from the spot. Attention of this Court is also drawn to the scene of crime visit report by mobile crime team to show that no chance prints were lifted from the spot. It is the submission of appellant's counsel that to effectively connect appellant with the offence in question, the chance prints on recovered knife ought to have been lifted. Learned counsel for appellant submits that *Smt.Chandrani (PW-21)* in her evidence has categorically denied that appellant was carrying any knife and it is also submitted that *Shashi (PW-16)* in his evidence has denied telling the police that appellant was apprehended with a knife. So, it is submitted that first informant-*Rishi (PW-13)* stands contradicted from the evidence of *Shashi (PW-16)* and *Smt.Munni (PW-22)*.

4. Learned counsel for appellant submits that appellant has been falsely implicated because he belongs to Valmiki Caste and his wife had belonged to Rajput Caste. Attention of this Court is drawn to the evidence of *Smt.Munni (PW-22)* to submit that family members of the deceased were

angry with the deceased as she was residing with appellant. It is further submitted that the injury sustained by appellant remains unexplained and this adversely impacts the prosecution case and so, appellant deserves to be acquitted.

5. Finally, it is submitted by learned counsel for appellant that the offence, if any, committed by appellant comes within the ambit of Section 304 Part I IPC and not under Section 302 IPC as appellant had no intention to murder his wife and the incident in question took place on account of a sudden quarrel. It is thus submitted that appellant has undergone sentence of about nearly six years and so the sentence awarded to appellant ought to be reduced to the period already undergone by him as his conduct in jail has been found to be satisfactory.

6. On the other hand, learned Additional Public Prosecutor for State submits that appellant had the intention to murder his wife as she was avoiding giving birth to a child and was often visiting her parents. It is submitted that from the evidence of *Rishi (PW-13)*, prosecution case stands proved and that appellant was apprehended on the spot with the weapon of offence which was found to be blood stained and so non-lifting of fingerprints is not fatal. It is submitted that the medical evidence indicates that appellant has inflicted multiple injuries on the vital parts of the deceased which clearly proves that appellant had the intention to murder his wife and that the minor injuries sustained by appellant have been opined to be self-inflicted by the concerned doctor. So, it is submitted that this appeal deserves dismissal.

7. After having heard both the sides at length and on scrutiny of the evidence on record, we find that the prosecution has relied upon evidence of

the landlords i.e. *Rishi (PW-13)*, *Shashi (PW-16)* and *Smt.Chandrani (PW-21)* and the deposition of *Smt.Munni (PW-22)* who is the sister of the deceased as well as the medical evidence on record. After having gone through the evidence of the witnesses, *Rishi (PW-13)*, *Shashi (PW-16)* and *Smt.Chandrani (PW-21)*, we find that their evidence cannot be dislodged on the ground that no fingerprints were detected on the blood stained knife recovered from the spot soon after the incident. Such a view is taken because from the prosecution evidence, it stands firmly established that that blood stained knife was recovered from appellant when he was apprehended from the spot. In such a situation, absence of fingerprints on the recovered knife loses its significance.

8. From the evidence of *Smt.Munni (PW-22)*, who is sister of the deceased, it stands firmly established that appellant had the motive to eliminate his wife. It does not stand to reason as to why appellant would be falsely implicated at the instance of family of deceased when they were not on talking terms with the deceased due to the deceased living with appellant for last 10 years. No doubt, appellant had sustained simple injuries and they have not been explained. But on this ground alone, prosecution version cannot be discarded for the reason that appellant's presence at the time and place of incident has not been disputed by him and he has not given any counter version of this incident. Appellant offered no explanation for the injuries sustained by him.

9. The incident in question had not taken place due to sudden quarrel and without premeditation. Such a view is taken because it has come in evidence of Investigating Officer that deceased had earlier made a complaint on 16th August, 2012 regarding appellant beating her and threatening to

perform second marriage. It is evident from the complaint (*Ex.PW-25/A6*) that deceased could not give birth to a child and had adopted a 2½ year old child of her brother-in-law (*devar*). So, it cannot be said that deceased was deliberately avoiding giving birth to a child. The background of this case as reflected in the complaint (*Ex.PW-25/A6*) negates the submission of appellant's counsel that the offence in question falls within the ambit of Section 304 Part-I of IPC and not Section 302 of IPC. In our considered opinion, the substratum of the prosecution case stands firmly established from the evidence of *Rishi* (*PW-13*), *Shashi* (*PW-16*) and *Smt.Chandrani* (*PW-21*) and also from the evidence of *Smt.Munni* (*PW-22*) and the medical evidence on record.

10. After having considered the prosecution case in its entirety, we find that the conviction of appellant for the offence in question is well-merited and the sentence awarded to appellant is well-deserved. Trial Court in the impugned judgment has meticulously adverted to the evidence on record and has aptly analyzed it and thereafter, has rightly concluded that appellant is guilty of the offence of murder.

11. In light of the aforesaid, we do not find any merit in this appeal and it is accordingly dismissed.

(SUNIL GAUR)
JUDGE

(C.HARI SHANKAR)
JUDGE

APRIL 07, 2018
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