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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A.459 /2002 & Crl. MA 1572/2002 and Crl. MB 441/2018

Date of Order: 13th April 2018

KULDEEP KUMAR

...Appellant

Through: Mr. Harsh Prabhakar (*amicus curiae*),
Mr. Anirudh Tanwar and Ms. Shaima
Khan, Advocates.

versus

STATE (NCT) of Delhi

...Respondent

Through: Mr. Hirein Sharma, APP for the State

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

J U D G M E N T

Dr. S. Muralidhar, J.:

1. This appeal is directed against the judgment dated 29th April 2002 passed by the Additional Sessions Judge, New Delhi in Sessions Case No.55/2001 arising out of an FIR No.713/1996 registered at Police Station ('PS') Dabri convicting the Appellant for the offence under Section 302 IPC and the order on sentence dated 8th May 2002 whereby he was sentenced to undergo imprisonment for life and to pay a fine of Rs.100/- and in default of payment of fine, to undergo rigorous imprisonment for one day.

2. The Appellant was charged with committing the murder of his wife, Sushila ('deceased'), on the intervening night of 22nd-23rd November 1996 at their residence at House No.H-68, Harijan Basti, West Sagarpur.

3. The deceased had married the Appellant on 20th November 1989. According to the prosecution, the Appellant misbehaved with the deceased and often hit her. Initially, at the time of his marriage to the deceased, the Appellant ran vegetable shop which he thereafter abandoned and began demanding money from his in-laws on the pretext of starting a different avocation. On some occasions, the father of the deceased gave the Appellant some money.

4. The case of the prosecution is that some days prior to the murder, the deceased was sent to her parents' house by the Appellant to get some money. The deceased, however, did not ask her parents for money but borrowed it from one of the neighbours. On coming to know of this, her brother, Narender Kumar (PW2), asked her to repay the money. In the meanwhile, he himself repaid the loan amount to the neighbour.

5. On the next day, i.e. 23rd November 1996, the Appellant came to the house of PW2 and told him that the deceased had expired. PW2 did not believe the Appellant right away but also received a telephone call from one Bharat Bhushan, the brother of the Appellant from Faridabad, informing him that his sister had died.

6. PW2 then reached the house of the Appellant and found the dead body of his sister. There was a ligature mark on her neck, stab wound on the left side of the neck and another stab wound on the left side of the stomach. Meanwhile, the police also reached there and in the presence of PW2, seized the burnt pieces of cigarette, *beedis*, ashtray and an empty half bottle of liquor and a knife. PW2 saw the police seize the above objects.

7. According to PW2, who gave the initial statement to the police on the basis of which the *rukka* was drawn up, when PW2 asked the Appellant as to how the deceased had died, the Appellant told him that on the previous night, Govind (PW24) had come their home and had consumed liquor. Thereafter, while the Appellant went to sleep, the deceased and PW24 continued conversing. The Appellant did not realize as to when PW24 left their house. However, later that night, 5 or 6 boys came to his room and started teasing the deceased. When the Appellant raised an objection, the boys beat the Appellant. Three of the boys took the Appellant in a red colour jeep and threw him out near Buddha Garden where he remained unconscious till about 3:00 pm. When he regained consciousness and reached home, he found the room locked. On breaking open the lock of the room, he noticed the deceased lying dead.

8. PW2 was not convinced with the above story of the Appellant and followed the Appellant to his room in Harijan Basti, West Sagarpur, where by now, a large crowd had gathered. PW2 noticed that his sister was frothing from her mouth. He told the police that he believed that it was the Appellant who had killed the deceased.

9. Upon the completion of the investigation, the charge sheet was filed and the charges were framed against the Appellant as indicated hereinbefore by the trial Court.

10. Twenty-four witnesses were examined by the prosecution. Shankar Lal (PW1) and Narender Kumar (PW2) were the brothers of the deceased. Two

neighbours of the deceased, i.e. Nand Lal (PW4) and Mohan Lal (PW5), turned hostile. One of the neighbours, who was witness to the seizure and he was Rishi Mudgil (PW6). The father of the deceased, i.e. Munshi Ram, was examined as PW9. The Investigating Officer ('IO') was Inspector Gurdev Singh, who was posted as Additional SHO in PS Dabri, who was examined as PW23. *Inter alia*, he mentioned how the Appellant kept on changing his versions.

11. Govind Sagar (PW24) admitted that when the deceased used to reside with her mother in the same area in which he used to live, he and the deceased had an affair and physical relations with each other. According to him, sometime in 1996, the deceased accompanied by the Appellant came to him and requested that he should get an employment for the Appellant. Later, he again visited their house to inform the deceased that he had found a suitable job for the Appellant, but the Appellant was not inclined to take it up. He asked PW24 to arrange a place for his *rehri* (cart). The Appellant then purportedly told PW24 that he would like to have drinks. Both of them then consumed whisky after which the Appellant told him that he was feeling drowsy and would like to sleep. According to PW24, while the Appellant slept with his face towards the wall he and the deceased had oral sex, after which PW24 left at around 11:00 pm or midnight. The next day, when PW24 went to attend his work, the police met him there and he came to know from them that the deceased had been murdered.

12. Nothing much could be elicited from his cross-examination that could favour the Appellant. When the circumstances and evidence gathered

against the Appellant were put to him under Section 313 of the Code of Criminal Procedure ('Cr PC'), he denied them and claimed to have been falsely implicated. When asked whether he had anything else to say, the Appellant stated as under:

"I am innocent. I had gone to my house at about 9 or 10 pm. I saw Govind, PW at my room. I enquired from my wife as to who he (Govind Sagar) was. Govind then told me that he was a friend of Narinder i.e. my brother-in-law. Govind was drunk at that time. I enquired from him as to whether he had taken liquor. Govind replied in the affirmative. I asked him to go to his house. When I had asked to leave my room, it enraged him. He started abusing me. He gave me a threat that does not know him (Govind Sagar). In fact we had a physical show down with me. He then told me that he will come within no time and let me know as to who he was. I did not pay attention to his threat and started washing my hands. Hardly had I washed my hands, 5-6 boys came in a Jeep with Govind Sagar, PW. I was took in that Jeep. I was assaulted by them. I became unconscious. When I regained consciousness, I found myself in Budhha Garden. I then came back to my room. I opened the room i.e. the lock of my room with the help of a key. In fact there used to be two keys of that room. One key used to remain in my possession and the other key used to remain in possession of my wife. When I opened the door of my room, I found Sushila dead. I then telephoned to my brother Bhushan. Kulbir had also come on the phone. I had a talk with them. I then went to house of Narender, PW and informed him about the death of Sushila. From there I went to Police Station Dabri where I was made to sit in the police station. The police officials were told the facts. They brought me to my room. From the room they took me back to the police station and falsely implicated me in this case. I was given beatings by the police officials. The police officials forced me to sign some papers. The papers were not read over to me though I had asked them to read out the same. In fact, when I asked the police officials as to what was written in those papers they gave me further beatings. I have not committed the

murder of my wife.”

13. The Appellant did not examine any witness in his defence. Not even an MLC was produced to substantiate his story of having been beaten up by three persons on the intervening night of 22nd-23rd November 1996 and being abandoned at Buddha Garden. The entire defence of the Appellant, therefore, remained unsubstantiated.

14. The trial Court came to the conclusion that the Appellant had no valid explanation for his wife being found dead inside their house with the only other occupant being the Appellant himself. The trial Court specifically rejected the plea that the murder was committed by the Appellant in anger on account of the “talks between Sushila and Govind Sagar”. The trial Court also rejected the plea that it was PW24 who may have committed the murder. The trial Court reasoned that it was not even disputed by the Appellant, as was evident from the questions put to PWs 1, 2 and 9 in their cross-examinations, that his wife was having illicit relations with PW24. Thus, with the deceased having satisfied his lust, PW24 would not have killed her, but may have tried to get rid of the Appellant. The single room in which the Appellant and the deceased were living did not have any window or ventilator and had only one door. The shirt of the Appellant contained the blood of human group ‘A’ which matched with that of the deceased. There was no reasonable explanation for this from the side of the Appellant. The chain of circumstances was complete and proved beyond reasonable doubt by the prosecution.

15. This Court has heard the submissions of Mr. Harsh Prabhakar, learned counsel appearing for the Appellant, and Mr. Herein Sharma, learned APP appearing for the State.

16. Mr. Prabhakar could not persuade the Court to accept the Appellant's version of events wherein he was attacked by 5-6 youths at his home on the intervening night of 22nd-23rd November 1996 and thereafter taken to Buddha Garden in a jeep and abandoned there. He sought to argue that the Appellant was most likely driven to sudden anger as a result of his deceased wife and PW24 having oral sex just behind his back after he had fallen asleep. Therefore, he sought to argue that the Appellant was guilty of committing the offence under Section 300 IPC, Exception 1, i.e. culpable homicide not amounting to murder.

17.1 In this regard, Mr. Prabhakar placed considerable reliance upon the decision of the Supreme Court in *State of UP v. Lakhmi (1998) 4 SCC 336*. The Court has perused the said judgment carefully. The facts therein were that the deceased was the young wife of the accused and that they had two children. With the accused dissipating his earning on alcohol, intermittent skirmishes used to erupt between husband and wife. In the early hours of 8th February 1970, the accused inflicted fatal blows on the head of the deceased with a *phali* (a spade like agricultural implement) on the head of the deceased. She died on the spot. One Ramey was working on the adjacent field and hearing the screams of the deceased, peeped through the window and witnessed the accused attacking his wife with the weapon. The hue and cry made by Ramey attracted his neighbours. Since the door of the room

was bolted from inside they broke it open, over-powered the accused, and trussed him up on a pole with a rope.

17.2. In his statement under Section 313 Cr PC, when confronted with the evidence of Ramey, the answer of the accused therein was, “It was not like that. I murdered her with a *kunda* and not with *phali*”. However, the accused therein tried to plead under Section 84 IPC to show that he is of unsound mind. He, however, could not persuade the trial Court that at the time when he committed the act, he suffered from a mental impairment as a result of which he did not know the nature of his act. An alternative defence proffered was that the deceased and Ramey were together in bed during the early hours on the date of the occurrence and, therefore, the benefit of Section 300 IPC, Exception 1 should be extended to the accused.

17.3. After discussing the features of the case, in para 20 of the above judgment, the Supreme Court noticed that another witness, one Raje, had deposed that as he was rushing towards the house of the accused, he saw Ramey scampering away and then saw the accused inside the bedroom muttering that Ramey had done foul acts with his wife and that he would murder him. The Supreme Court noticed that although the public prosecutor had challenged that part of the testimony of Raje, he did not declare him hostile. In those circumstances, the Supreme Court concluded in paragraph 20 as under:

“20. The above features positively suggest that the accused would have seen something lascivious between his wife and PW2 just when he entered the house from the field.”

17.4. As a result, the Supreme Court viewed the offence as being one of

culpable homicide not amounting to murder and converted the conviction to one under Section 304-I IPC.

18. In the present case, however, it is not the defence of the Appellant that he in fact noticed PW24 and the deceased in a compromising position as a result of which he became enraged and killed his wife. This is not even pleaded as an alternative line of defence. In his initial version as spoken to by PW2 and even in his statement under Section 313 Cr PC, the Appellant maintained that on the intervening night of 22nd-23rd November 1996, after PW24 left, there was an attack on him by 5-6 boys and that he himself was beaten up by them, taken away in a car, and dumped at Buddha Garden and that when he came back, he found his wife dead. This was rightly disbelieved by the trial Court as there was no evidence to substantiate this.

19. Whereas in *State of UP v. Lakhmi* (*supra*), the evidence clearly shows that the accused therein acknowledged that Ramey had done some foul acts with his wife and that the accused would murder him for that, there is no evidence at all in the present case to show that the Appellant witnessed PW24 having oral sex with his wife and that is why he became enraged and murdered his wife. Therefore, the benefit of Section 300 IPC, Exception 1 cannot possibly be granted to the Appellant in the facts and circumstances of the present case.

20. Mr. Prabhakar also relied upon the decisions in *Akhtar v. State AIR 1964 (All) 262*; *Narbahadur Darjee v. The State AIR 1965 Gau 89*; *Raj Kumar @ Rajesh Pandit v. State 2012 SCC-OnLine Del. 1013*; and *Sabra*

v. State 2016 SCC OnLine Del. 2844 in support of the plea that a killing committed in the heat of passion on receiving sudden provocation would constitute an offence punishable under Section 304-I IPC and not Section 302 IPC. However, for the reasons stated hereinbefore, the Court is not satisfied that in the present case, the Appellant has been able to show that he caused the death of his wife as a result of becoming enraged by sudden provocation.

21. For the aforementioned reasons, the Court holds that no ground is made out for interference with the judgment of the trial Court. The appeal is accordingly dismissed. Pending applications are also disposed of. The trial Court record be returned forthwith with a certified copy of this judgment.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 13, 2018
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