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

+ **CRL.A. 203/2003**

ANOOP KUMAR Petitioner

Through: Mr.M.L.Yadav, Advocate.

versus

STATE. Respondents

Through: Mr.Hirein Sharma, APP with SI
G.N.Tiwari, P.S.Lahori Gate.

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE VINOD GOEL**

JUDGMENT
27.07.2018

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Dr. S. Muralidhar, J.:

1. This is an appeal directed against the judgment dated 17th March 2003 passed by the learned Additional Sessions Judge, Delhi in Sessions Case No.86/2001 arising out of FIR No.300/1992 registered at Police Station ('PS') Lahori Gate convicting the Appellant for the offence under Section 302 of the Indian Penal Code ('IPC') and the order on sentence dated 20th March 2003 sentencing him to imprisonment for life along with a fine of Rs.5,000/-, and in default of payment to undergo rigorous imprisonment (RI) for 1 year. The Appellant was also convicted for the offence under Section 201 IPC and sentenced to undergo RI for 3 years along with a fine of Rs.1,000/-, and in default of payment to undergo RI for two months. Both the sentences were directed to run concurrently.

2. The charge against the Appellant, Anoop Kumar (Accused No.1-A-1) was

that he along with the co-accused, i.e., his mother, Nemwati (A-2) and his *jethani* (sister in law), Madhu Devi (A-3) in furtherance of their common intention subjected his wife Lalita Devi (the deceased) to cruelty and also made illegal demands of dowry thereby committing the offence punishable under Section 498A read with Section 34 IPC; secondly on the intervening night of 18th/ 19th November 1992 at the premises No.1132, Gali Samosan, Prashkhana all of them in furtherance of their common intention committed the murder of the deceased thereby committing an offence punishable under Section 302 read with Section 34 IPC. The third charge under Section 201 IPC for causing evidence to disappear was only against the present Appellant. He was charged with having thrown the nylon rope which was used in the commission of offence near Ajmeri Gate, three wheeler scooter stand.

3. An alternative charge for the offence under Section 304B IPC was framed only against the Appellant's mother, Smt. Nemwati (A-2). However, even before the trial could commence, A-2 expired. The trial Court could proceed only against the Appellant and A-3.

4. By the impugned judgment of the trial Court, the co-accused A-2 has been acquitted of all the offences. It is only the Appellant who has been convicted under Section 302 and Section 201 IPC and sentenced in the manner noticed hereinbefore.

5. The case was based on circumstantial evidence. That the deceased died a homicidal death as a result of strangulation was proved by the post mortem

report (Ex.PW-14/A, 14/B and 14/C) submitted by Dr.Basant Lal (PW-14). He noticed a ligature mark “10.5 x 1.5 cm situated on middle front of neck 5.5 cm below the chin and 5.6 cm below the right angle of lower jaw.” There were contusions over the face, right elbow and right forearm. His opinion was that death was caused due to asphyxia as a result of strangulation with a ligature. All the injuries were ante mortem and recent in duration. PW-14 was subjected to extensive cross-examination but nothing emerged to show anything contrary to the opinion formed by him regarding the death being homicidal and the cause of death.

6. It emerged in the evidence of Smt. Kanti (PW-1), the mother of the deceased and Hari Om (PW-2), the father of the deceased that the marriage of the Appellant and the deceased took place on 26th January 1991. Although both witnesses talked about the deceased being subjected to harassment and demands for dowry by the accused, that part of the evidence has been disbelieved by the trial Court. The co-accused as well as the present Appellant have been acquitted for the offence under Section 498A of the IPC.

7. On the aspect of the offence under Section 302 IPC, the trial Court has, in the impugned judgment, drawn the following conclusions:

(i) On the fateful night, the neighbours noticed that the television was playing in the house of the accused on a high volume. Although the accused suggested that the deceased was suffering from loose motions and was in a weak condition and, therefore, had to be taken to hospital for treatment,

PW-2 heard from the neighbours that there had been a quarrel between the deceased and the Appellant the previous night during which the Appellant had given her a beating. It was that beating which resulted in her death.

(ii) the television was being played in full volume to make it appear to the neighbours that the deceased was suffering from dysentery for the last two days and was inside whereas she had already been killed as a result of strangulation.

8. The trial Court proceeded to surmise that the fact that Vinod Kumar (PW-5) asked the Appellant to bring a three-wheeler to take his wife to the hospital but the Appellant only availed a cycle rickshaw showed that he deliberately extinguished the possibility of her survival. According to the trial Court, when he brought her into the hospital, he told the doctor that she was suffering from dysentery and diarrhoea but even the doctor who first examined her at the JPN Hospital at 1.20 am on 19th November 1992 noticed that she was brought by her husband but was brought dead and simply noted that she was brought in “a state of unconsciousness and that no further details are available.” However, the trial Court proceeded to conclude that the Appellant had given wrong information first to the police and then to the relatives and had taken the deceased to the hospital

“only after obtaining a medical certificate about her death and not for treatment because the accused had already known that she is dead. He might have requested the doctor not to mention the ligature mark on the neck and that can be the reason that the doctor did not mention it but unfortunately the efforts made by the accused were dashed to grounds when the SDM who happened to be a doctor was deputed to prepare inquest papers

and he noticed the ligature mark and got the case registered after obtaining the post mortem report which had confirmed it to be a death due to strangulation and not by dehydration as claimed by the accused. The accused in this case had tried to be over clever and he succeeded in procuring a favourable report from one doctor who declared Lalita brought dead but did not mention the ligature mark on the neck but that very ligature mark when noticed by SDM was not rightly ignored by him which resulted in the discovery of the cause of death when the body was sent for the post mortem examination and the doctor confirmed it to be a death due to strangulation and injuries ante mortem. Thus, the planning of the accused to take the dead body to the hospital just to get a medical certificate of death and then to propagate that she had died of diarrhoea and to convey that every report to the mother and brother of the deceased and to call them to the spot and also to persuade them to believe him and to make statement in favour of the accused all efforts proved futile and he was found responsible for the death of his wife even by the relatives of the deceased and they changed their statements expressing suspicion on the cause of death not due to diarrhoea but by strangulation.

9. The Court finds that the above conclusions of the trial Court are based primarily on conjectures and surmises. While it is correct that the prosecution proved beyond reasonable doubt that the deceased had died a homicidal death, that circumstance by itself is insufficient to bring home the guilt of the present Appellant. Each of the links in the chain of circumstances had to be proved beyond doubt.

10. The Court finds that the Appellant has taken a defence that he was not present in the house when his wife died. Unfortunately for the prosecution, as many as five witnesses turned hostile on this aspect and supported this claim. These are Smt. Renuka (PW-4), Vinod Kumar (PW-5), Ashok Kumar

Gupta (PW-7), Smt.Shiv Rani (PW-8) and Smt.Maya Pandit (PW-11). Each of them has stated that the Appellant was not present in the house and he had to be summoned after they found the deceased in an unconscious/dead condition at her house. All of them have uniformly stated that at that time, they noticed A-2 and A-3 in the house but not A-1.

11. The trial Court has not even bothered to discuss the evidence of these hostile witnesses but has proceeded on conjectures and surmises to conclude that it is the Appellant alone who was responsible for strangulating his wife. The trial Court has, in that process, failed to observe the legal requirement that the prosecution has to conclusively prove each link in the chain of circumstances and, in particular, that those proved circumstances must point unerringly to the guilt of only the accused and no one else. In the present case, with the presence of the Appellant in the house at the time of the death of the deceased not having been established and with the possibility of the other occupants committing the crime not having been ruled out, it was erroneous on the part of the trial Court to conclude that it is the Appellant alone who murdered his wife.

12. The Court is, therefore, unable to concur with the trial Court both as regards the guilt of the Appellant for the offence under Section 302 read with Section 34 IPC or Section 201 IPC. The Appellant is entitled to the benefit of doubt and is acquitted of the aforementioned offences.

13. The appeal is accordingly allowed. The impugned judgment and order on sentence of the trial Court are set aside. The bail bonds and surety bonds furnished by the Appellant shall stand discharged.

14. The Appellant shall fulfil the requirements of Section 437A Cr P C to the satisfaction of the trial Court. The trial Court record be sent back forthwith along with a certified copy of this judgment.

S. MURALIDHAR, J.

VINOD GOEL, J.

JULY 27, 2018
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