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

+ CRL.A. 569/2003

MOHD. WAKIL

..... Appellant

Through: Mr. Sumeet Verma,
Advocate with Ms. Preeti
Jakhar, Advocate

versus

STATE

..... Respondent

Through: Mr. Hirein Sharma, APP
for State

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

ORDER

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13.09.2018

Dr. S. Muralidhar, J.:

1. This is an appeal directed against the judgment dated 22nd February 2003 passed by the learned Additional Sessions Judge ('trial Court') in SC No.56/2001 arising out of FIR No.490/1999 registered at Police Station ('PS') New Friends Colony convicting the Appellant for the offence punishable under Section 302 IPC and the order on sentence dated 27th February 2003 whereby the Appellant was sentenced to imprisonment for life along with payment of fine of Rs.100/-, and in default of payment, to undergo rigorous imprisonment for one day.

2. The Appellant was charged with having murdered his wife Shahnaz ('the deceased') at around 9 am on 10th August 1999 in

their *jhuggi* at R Block, Jogabai Extension, New Delhi by strangulating her.

3. The background facts in the present case are that the deceased had been married once prior to her wedding with the accused and from that wedlock had a young daughter aged who was around three years at the time of the death of the deceased. The marriage between the deceased and the Appellant was admittedly a love marriage. The Appellant was engaged in casual work as a labourer. At around the time of her death, the deceased was unwell and this is spoken to by the PWs themselves.

4. The first person who noticed the Appellant and his wife together on the morning of the incident was Bano (PW-4). She noticed that at around 8-8:30 am, the Appellant was helping his wife urinate. After some time, she noticed Shabnam, the daughter of the deceased, weeping at the door of the *jhuggi*. She enquired from Shabnam as to why she was weeping and thereafter, when she moved the curtain, she found the deceased hanging with a *dupatta* tied to a bamboo on the roof of the *jhuggi*. She stated that the deceased was hanging facing the door and the Appellant was sleeping nearby at that time.

5. PW-4 then rushed and called Mohammad Nayeem (PW-3), another neighbour. PW-3 too reached there and noticed the deceased hanging by a *dupatta* from the roof of the *jhuggi* and the Appellant sleeping nearby. PW-3 stated that he gathered 4-5 persons from the neighbourhood while the Appellant remained

asleep. With the help of the other persons, they cut the *dupatta* with a pair of scissors and thereafter woke the Appellant up. PW-3 further stated that immediately after getting up, the Appellant started hugging the deceased and said “*Shahnaz ye kya kar liya*”. Thereafter, the Appellant took the deceased in a rickshaw to the hospital along with other neighbors, where she was declared dead.

6. Since the death was unnatural, the Sub-Divisional Magistrate (‘SDM’), Defence Colony, conducted the inquest proceedings in which she noticed that the deceased had married the Appellant about four months earlier without the consent of her parents, Mohammad Alam (PW-1) and Kuresha Khatoon (PW-2). Her parents stated that the Appellant would often beat their daughter and that she was beaten again by the Appellant on the day before her death. They alleged that the death was not suicidal and suspected that the Appellant was involved in her murder. The SDM noted that the post mortem examination had been conducted on 11th August 1999 at the Department of Forensic Medicine & Toxicology at the All India Institute of Medical Sciences (‘AIIMS’) and that the post mortem report (Ex.PW-11/A) pointed to the death being on account of asphyxia “as a result of strangulation by ligature, i.e. injury no.2, which is sufficient to cause death in the ordinary course of nature”. Accordingly, the SDM recommended that necessary action be taken against the Appellant.

7. Inspector Nagender Singh (PW-16), the investigating officer ('IO') of the case, got the case registered for investigation. On 12th August 1999, he arrested the Appellant and prepared his personal search memo. Nothing was recovered from the Appellant. On completion of the investigation, the charge sheet was filed and by an order dated 19th April 2000, the trial Court framed the charge against the Appellant as indicated hereinbefore. On behalf of the prosecution, 17 witnesses were examined.

8. Significantly, as pointed out by learned APP, the final cross examination of PW-4 took place nearly two years after her initial cross-examination wherein she stated that the deceased was fed-up because of her illness. PW-4 further stated that "It is correct that accused Mohd. Vakil used to very much love Shahnaz. It is also correct that Shahnaz also used to love the accused very much. It is correct that there used to be no quarrel between the accused and Shahnaz." However, if one goes by the initial cross-examination of PW-4 which was conducted on 22nd August 2000, immediately after conclusion of her examination-in-chief, she stated that she and the deceased would talked to each other regularly and she had also spoken to the deceased on the previous evening. PW-4 further stated "on one or two occasions the accused had a *jhagra* with his wife" but made no mention of any quarrel having taken place between the deceased and the Appellant on the previous evening or even on the morning of the incident. On the other hand, she maintained even in her cross-

examination “in the morning at about 8-8:30 am the Wakil (Appellant) had taken out his wife by giving physical support for urination and seen.....” This much has certainly been confirmed by both the PWs 3 and 4 that the Appellant accompanied the deceased to the hospital once they brought the body down which was hanging from the roof by a *dupatta* and that he was supporting the deceased on the morning of the incident as she was unwell.

9. As correctly noted by the trial Court, the medical evidence in this case was critical for determining whether the death was suicidal or homicidal. PW-11 who performed the post-mortem noticed the following ante-mortem injuries on the dead body:

“1. Single contusion on the right angle of mandible measuring 3cms x 2 cms, fresh in origin.

2. Ligature mark present on the upper part of the neck 16 cms. In length horizontally placed, situated 7 cms, below left ear below the right side. It was extended almost midline of the back. The colour was red on further dissection of the ligature extensive injury with bleeding present in underneath neck structure.”

10. The deceased was three months’ pregnant at the time of the incident. PW-11 concluded, as noticed earlier, that the cause of death was “asphyxia as a result of ligature strangulation.” In his cross-examination, PW-11 disclosed that he perused the papers that accompanied the application for the post-mortem examination and “from the papers I had come to know it was a case of strangulation.” The next question and answer is important and read as under:

“Ques. Were you aware of the fact that it was a case of hanging before you had started conducting the post-mortem examination?

Ans. No.”

11. In other words, PW-11 was not aware when he conducted the post-mortem that the body of the deceased was actually found hanging from the roof and was brought down by cutting the *dupatta* by some of the neighbors, as adverted to by PW-3. As regards the injury no. 1 found in the post mortem, the questions put to him and subsequent answers were as follows:

“Ques. You had found one contusion on the person of the deceased. Whether this particular injury (contusion) was possible due to fall on a hard surface or not?

Ans. It could be possible.

Ques. Is that possible that when the string had been cut and the body had fallen on the ground, the injury (contusion) had been caused?

Ans. It was possible only if the person was alive at that time.

Ques. Is it correct that in the case of strangulation as well as hanging the death is due to lack of air/oxygen (asphyxia)?

Ans. Yes.”

12. From the cross-examination PW-11, it appears that he may not have been as categorical about the death being on account of strangulation if he had been told that the body was in fact hanging from the roof and was then brought down by cutting the *dupatta*.

13. The trial Court also noticed this lack of categorical medical opinion and therefore observed in para 39 of the impugned judgment as under:

“39. Though PW11 had been cross examined at length yet it was not put to him that it was not a case of strangulation or that it was a case of suicide. In order to find out as to what salient features which show the difference between strangulation and hanging. I had studied the material.”

14. The trial Court referred to “The Essentials of Forensic Medicine and Toxicology” authored by Dr. K.S. Narain Reddy (19th Addition) where a comparative table was found indicating the traits present in the case of hanging and those present in strangulation by ligature. One important factor was the ligature mark itself. If it was oblique and not completely encircling the neck high up between the chin and larynx, it was more likely in the case of hanging whereas in the case of strangulation by ligature, it would be “*transverse, completely encircling the neck below the thyroid cartilage.*” In the present case, it will be noticed that according to PW-11, the ligature mark was present “on the upper part of neck”, although it was noticed as being ‘horizontally placed.’ It did not fully encircle the neck. It was “*extended almost mid line of the back.*” Therefore, even going by the medical literature it was not possible to conclude that the ligature mark in the present case was consistent with what would be found in the case of strangulation.

15. It also appears that the trial Court went by the fact that blood stained discharge was noticed from the nose and mouth of the

deceased, and since this were not common in the case of hanging but was common in the case of strangulation, it should be a homicidal death. The Court is constrained to note that in the present case, the trial Court has taken upon itself the task of determining, with reference to medical literature, whether it was the case of suicide or homicide. This should have been left for expert opinion. Nothing prevented the trial Court from again calling the same doctor and confronting him with the medical literature and asking him to explain whether the death was a homicide or suicide. In particular, he should have been asked very categorically that since the body was in fact hanging from the roof, whether his opinion would be any different since he was not aware of this fact when he submitted his post mortem report. This was not a matter for the Trial Court to take upon itself to decide without the assistance of the expert who was available.

16. Consequently, this Court is not able to concur with the trial Court that in the present case, the medical evidence conclusively proves that this was a case of homicidal death.

17. The trial Court appears to have straightaway proceeded after this to the aspect of motive. Despite correctly noting that “the prosecution did not try to establish as to what precisely was the motive for the accused to commit the crime”, the trial Court drew from the evidence of DWs 1 and 2 as having provided the motive. In the considered view of the Court, the trial Court misread the evidence of both DWs 1 and 2 in this regard.

18. DWs 1 and 2 were neighbours of the deceased and the Appellant. DW-1 maintained that the Appellant and deceased “were having a very cordial relation.” He spoke to the fact that Appellant was found asleep at the time the neighbours noticed the deceased hanging with the roof. He also stated that the deceased “used to remain ill” and was ill for at least about 15-16 days before her death. He confirmed that the Appellant “used to look after her very well in fact it was he who used to take her for urination.” DW-1 stated this version even in his cross-examination by the APP. There was nothing to doubt the veracity of his testimony.

19. Then we have DW-2 who was of the view that the deceased died because of her illness. He maintained that relations between the Appellant and the deceased “before marriage and after marriage till her death were very cordial.”

20. It is strange that only one portion of the testimony of this witness DW-2, pertaining to the illness of the deceased and that he himself also used to take her to the hospital, has been picked up by the trial Court to conclude that the Appellant must have wanted to kill his wife because of the expenses involved in her treatment. While it is true that DW-2 spoke about seeing the Appellant taking the deceased to the doctor and also accompanying them to the doctor who stated that the condition of the deceased required surgery and she had to be taken to “a big hospital.” The trial Court completely omitted the other parts of

the deposition of DW-2, namely that both the Appellant and the deceased continued to love each other before and after marriage and their relations were very cordial. It is impossible to arrive at the conclusion that the trial Court reached, on the reading of the evidence of DWs 1 and 2, that the Appellant wanted to kill his wife because of the expenses involved in her treatment. On the contrary, the evidence shows that the Appellant continued to love his wife and was also accompanying her to the hospital for her treatment. In fact, this comes across even in the cross-examination of PW-4, which has been adverted to earlier.

21. With the other circumstances not being proved beyond reasonable doubt against the Appellant, it became important for the prosecution to prove the motive for the commission of the crime as explained by the Supreme Court in *Arjun Marik v. State of Bihar 1994 Supp (2) SCC 372*, in the following words:

“...mere absence of proof of motive for commission of a crime cannot be a ground to presume the innocence of an accused if the involvement of the accused is otherwise established. But it has to be remembered that in incidents in which the only evidence available is circumstantial evidence then in that event the motive does assume importance if it is established from the evidence on record that the accused had a strong motive and also an opportunity to commit the crime and the established circumstances along with the explanation of the accused, if any, exclude the reasonable possibility of anybody else being the perpetrator of the crime then the chain of evidence may be considered to show that within all human probability the crime must have been committed by the accused.”

22. In the present case, as noticed by the trial Court, the prosecution has miserably failed to prove any motive for commission of the crime and as found hereinbefore the trial Court erred in drawing such motive from the evidence of DWs 1 and 2 when it was not possible to draw any such conclusion. The evidence of PWs 1 and 2 about the Appellant giving beatings to the deceased has not been corroborated by any of the independent witnesses who have actually spoken to contrary.

23. Consequently, the Court is of the view that with the present case being based on circumstantial evidence, the prosecution has failed to prove each link in the chain of circumstances beyond reasonable doubt and most importantly failed to prove that complete chain of circumstances pointed unmistakably to the guilt of the Appellant. Granting the Appellant the benefit of doubt, the Court acquits him of the offence under Section 302 IPC and sets aside the impugned order of conviction and order on sentence by the trial Court.

24. The appeal is allowed. The Appellant's bail bond and surety bond stand discharged. He will fulfill the requirements of Section 437A Cr PC to the satisfaction of the trial Court at the earliest. The trial Court record be returned together with a certified copy of this judgment.

S. MURALIDHAR, J.

VINOD GOEL, J.

SEPTEMBER 13, 2018/ *"shailendra"/pv*