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

+ **CRL.A.669/2003**

SANJAY

..... Appellant

Through: Mr. Sanjay Abbot, Advocate.

Versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Mr. Kewal Singh Ahuja, APP
for State.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL

ORDER
13.09.2018

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Dr. S. Muralidhar, J.:

1. At the outset, learned counsel for the Appellant has pointed out that the Appellant was sent up for trial along with his father Tilak Raj (A-1) and his brother Dalip (A-2) (husband of the deceased) but both of them have since expired during the pendency of their appeals before this Court. Their appeals were disposed of as having abated on 29th May 2014.

2. The present Appellant was the brother-in-law of the deceased. The charge against him and the co-accused was that they entered into a criminal conspiracy at some point in time between 24th April and 6th May 1999 to cause the dowry death of the deceased and thereby committed an offence punishable under Section 120B IPC. The second charge was that between 27th January 1996, i.e. the date of marriage of A-2 with the deceased, and

6th May 1999, they subjected the deceased to harassment for dowry leading to her unnatural death within seven years of marriage thereby committing an offence under Section 304B IPC. The alternate charge was that between 24th April and 6th May 1999, at T-2461, Subhash Nagar, Faiz Road, Karol Bagh, Delhi, they murdered the deceased thereby committing an offence punishable under Section 302 IPC.

3. The criminal justice process was set in motion in the present case when a missing person report was lodged at PS Mukherjee Nagar on 25th April 1999 at PS Mukherjee Nagar stating *inter-alia* that on 25th April 1999, the wife of A-2 had gone missing. A-2 was accompanied by his brother-in-law Sunil Kumar and his father, A-1. PW-1 and her son also reached there at the same time. What is not in dispute is that the deceased had on 25th April, 1999 visited her friend Sudesh Kumari (PW-6) and thereafter went missing.

4. PW-6 deposed that she received a call from the deceased on 25th April 1999 seeking to meet her. Thereafter the deceased went over to the residence of PW-6 where they spoke about their school days. After some time the deceased wished to return home and left after 15-20 minutes. At around 2 to 2.30 pm, PW-6 received a telephone call from the deceased stating that she wished to leave some articles. The deceased then came there at around 5 to 5.30 p.m. In the meanwhile, A-2 called PW-6 to inquire if the deceased had reached there. The deceased left behind one purse containing bangles, a *mangal sutra*, a baby suit and a baby cycle at the house of PW-6. Thereafter at around 9.30 to 10 pm PW-1 came to the house of PW-6 to inquire about the deceased.

5. It transpired that four days after the deceased went missing i.e. on 29th April, 1999 a dead body was fished out of the Yamuna river. It was taken to the Police Post (PP) at Yamuna Pushta. Sub-Inspector (SI) M.H.Khan (PW-12) along with Constable (Ct.) Devki Nandan went there and sent the dead body to the Subzi Mandi Mortuary for being preserved since the identity of the body could not be established. The body was by that time in a highly decomposed stage.

6. The post mortem was performed by Dr. L.C. Gupta (PW-5) on 5th May 1999. The nasal bone was found fractured. There was a fracture with dislocation of the upper lip. A huge collection of hematoma was present in the upper 1/3rd of the neck tissue. The lungs were shrunk out and all chambers of the heart were full of blood. The opinion as to the cause of death was given as asphyxia 'resulting from cumulative effect of manual smothering and its strangulation which is sufficient to cause death in the ordinary course of nature'. In other words, the opinion was that it was a homicidal death and that the death had taken place about 1-2 weeks prior to the post mortem. It was observed that a detailed examination of the dead body was not possible because of the advanced stage of putrefaction and further 6-7 days delay in conducting the post mortem.

7. SI Chander Prakash (PW-14) who was the first IO stated that on 18th May 1999 when he was posted at PS Karol Bagh, PW-1 came there and got her statement recorded. It is not clear how PW-1 came to know about the body of the deceased having been located. She simply stated in her examination in

chief that 'in the Fifth month police had informed us that a dead body was recovered from River Yamuna and last rites were performed of the said body'. Likewise, it is not clear how the Police found out the details of whom to contact.

8. Be that as it may, in her the statement to the police on 18th May 1999, PW-1 stated that initially the in-laws of the deceased made a demand for money to purchase furniture and therefore they were given Rs.20000. PW-1 accused them of harassing and physically torturing her daughter for dowry and she suspected that the in-laws of her daughter were responsible for her death. Based on the said statement (Ex.PW-1/A) a rukka was drawn up and an FIR was registered by PW-14 at PS Karol Bagh under Sections 498-A/304B/120B IPC.

9. Subsequently on 22nd November, 1999 the investigation was handed over to SI Sunil Kumar (PW-13). After completion of the investigation, PW-13 filed the charge-sheet and by an order dated 19th November, 2001, the charges were framed by the trial Court in the manner indicated hereinbefore. Significantly, no charge under Section 498-A IPC was framed against the accused.

10. Fourteen witnesses were examined for the prosecution. The three Accused denied the incriminating circumstances put to them under Section 313 Cr PC. Specific to the present Appellant i.e. Sanjay (A-3), he stated as under:

“I am innocent. There were no demands of dowry or harassment on our part to the deceased during her life time. The deceased was

living happily in the matrimonial home and there was no complaint of any kind from her side against us. On 25.4.99 the mother of the deceased Smt. Bimla and her brother Vidya Sagar accompanied us to police station Mukherji Nagar and made statement vide DD No. 6-A in which no complaint of any kind nor any suspicion on any of the Accused in the death of her missing of deceased daughter was ever mentioned by her parents. The police has arrested us just to harass us and to solve a blind case.”

11. The trial Court in the impugned judgment dated 10th September, 2003 came to the following conclusions:

- (i) The deceased died under other than under normal circumstances. The medical evidence suggested that she was murdered before her body was thrown into the Yamuna.
- (ii) The conduct of A-2 in calling up PW-6 to find out about the deceased and asking her for the telephone numbers, which were already known to him, points an accusing finger towards the accused as if he was keeping a watch on the movements of the deceased.
- (iii) The identity of the dead body fished out from Yamuna being that of the deceased was not in doubt.
- (iv) PW-1 and her son identified the clothes of the deceased, as did A-2, who identified the dead body from the photo taken of the dead body.
- (v) There was no evidence of any demand for dowry from the family of the deceased either at the time of marriage or thereafter. There was no complaint made against any of the accused in this regard.

(vi) The lodging of police report with PS Mukherjee Nagar, within the jurisdiction of which neither the accused nor the complainant resided showed that “the convenient police station was chosen by the accused so that they might get a missing report recorded as per their convenience.”

(vii) Since the ligature mark was found on the neck, and the death was due to manual smothering, it was not a case of suicide.

12. The trial Court was led into believing that after the deceased left the articles at the house of PW-6, “she was immediately followed by the accused persons, and after strangulation and manual smothering, the body was thrown in the Yamuna which was later on fished out.” On the above basis, the trial Court proceeded to convict the three accused for the offences with which they were charged and by a separate order on sentence also dated 10th September, 2003, sentenced all the three accused (including the present Appellant) to life imprisonment and fine of Rs.2,000/- and in default of payment of fine to undergo Rigorous Imprisonment for six months for the offence under Section 302/34 IPC and identical sentence for the offence under Section 120-B IPC and further that both sentences shall run concurrently. In other words, the three accused, including the Appellant, were acquitted for the offence under Section 304-B IPC.

13. This Court has heard the submissions of Mr. Sanjay Abbott, learned counsel for the Appellant and Mr. Kewal Singh Ahuja, learned APP for the State.

14. To begin with, the observations of the trial Court that the complaint regarding the deceased having gone missing was conveniently lodged by the Accused at PS Mukherjee Nagar “so that they might get a missing report recorded as per their convenience” do not appear to be justified, particularly since the house of PW-6 was located at Vijay Nagar which falls within the jurisdiction of PS Mukherjee Nagar. Secondly, PW-1 and her son Dharam Pal (PW-4) confirmed going to PS Mukherjee Nagar to lodge a missing complaint along with A-1 and A-2 on 25th April, 1999 itself i.e. the date she went missing. Thirdly, it was not even a case of the prosecution that the police at PS Mukherjee Nagar recorded the missing complaint in order to favour the accused. There was no suggestion to that effect to either PW-1 or PW-4 when they deposed in Court.

15. The fact that A-2 called up PW-6 to find out whether the deceased had reached there did not mean that he “was keeping a watch on the movements of the deceased”. The fact remained that the deceased remained present with PW-6 on 25th April, 1999 twice, and on the last occasion, left certain articles there. It is not possible to draw an inference from the above facts about A-2 “keeping a watch on the movements of the deceased”. Since he was her husband, he was naturally concerned about the deceased not having returned home after visiting PW-6.

16. The trial Court itself found that there was no evidence to substantiate the charge that the deceased was subjected to harassment and cruelty for the purpose of dowry, soon before her death and therefore the trial Court itself has acquitted the accused for the offence under Section 304-B IPC.

Moreover, no charge under Section 498-A IPC was framed against any of the Accused.

17. In order to show that the homicidal death was caused by the three accused, it was incumbent for the prosecution, in order to bring home the charge of murder, to show that it was the accused and the accused alone who could have committed the murder and no one else.

18. This was a case of circumstantial evidence. All the links in the chain of circumstances put forth by the prosecution had to be proved beyond reasonable doubt evidence. The Court finds that there was a huge gap in the narration of facts by the prosecution. What prompted the deceased to go missing after 25th April, 1999 was not clear at all. If she was not subjected to harassment and cruelty soon prior to her death, then the motive for the crime becomes significant.

19. Here the Court finds that the trial Court had indulged in conjectures and surmises when it held that the three accused had followed the deceased after she left the house of PW-6, strangled her and then threw her body in Yamuna river. There is not even a shred of evidence to even remotely suggest the same. It was perhaps an important links in the chain of circumstances, particularly since the deceased went missing on 25th April, 1999 and her dead body was fished out from the Yamuna on 29th April, 1999. There is nothing to show at all that any of the accused, and in particular, the present Appellant, was seen with the deceased, at any time after she had left the house of PW-6 on 25th April, 1999. There is, therefore, huge gap in the story of the prosecution which was not even attempted to be

explained by it. In fact, how the present Appellant can be connected with the crime is not explained at all by the prosecution.

20. Consequently, this Court is unable to concur with the trial Court in its finding that all three accused, including the present Appellant, were guilty of the offence punishable under Section 120-B IPC and Section 302 IPC read with Section 120-B IPC. There is no evidence to connect the present Appellant with the aforementioned crime.

21. For all of the aforementioned reasons, this Court acquits the Appellant of both offences i.e. under Section 120-B IPC as well as Section 302 read with Section 34 IPC and also sets aside the corresponding order on sentence passed by the trial Court against him for the above offences.

22. The appeal is accordingly allowed.

23. The bail bonds and surety bond furnished by the Appellant stand discharged. He will fulfil the requirement of Section 437-A Cr PC to the satisfaction of the trial Court at the earliest.

24. The trial Court record be returned forthwith along with a certified copy of this judgment.

S.MURALIDHAR, J.

VINOD GOEL, J.

SEPTEMBER 13, 2018

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