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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A. 123/2014 & CRL.M.(BAIL)2271/2017

LATIF @ DALLU

..... Appellant

Through: Mr. Satish Tamta, Sr. Advocate
with Ms. Nisha Narayanan and
Mr. Shariq Iqbal, Advocates.

versus

STATE

..... Respondent

Through: Mr.Amit Chadha, APP for State

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

J U D G M E N T

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07.05.2018

Dr. S. Muralidhar, J.:

Introduction

1. This is an appeal directed against the judgment dated 21st October 2013 passed by learned Additional Sessions Judge, Dwarka Courts, New Delhi in Sessions Case No.2/2013 arising out of FIR No. 212/2012 registered at Police Station ('PS') Chhawla convicting the Appellant for the offences under Sections 302 and 201 IPC.

2. This appeal is also against the order on sentence dated 30th October 2013 whereby the Appellant was sentenced to undergo rigorous imprisonment ('RI') for life with a fine of Rs.10,000/-, and in default of payment of fine to undergo simple imprisonment ('SI') for six

months for the offence under Section 302 IPC; and to undergo RI for three years with a fine of Rs.3,000/-, and in default to undergo SI for two months for the offence under Section 201 IPC. The sentences were directed to run concurrently.

3. It must be noted at the outset that the Appellant was charged with the offences under Sections 498 A IPC and 304 B IPC but acquitted of those offences by the trial Court. The charge against him under Section 302 IPC for having committed the murder of his wife Shama (the deceased) by smothering on 20th September 2012 at an unknown time in their house at House No. 217, near Harijan Chaupal, Deen Pur Village, New Delhi was an alternative charge. The Appellant was also charged with causing the evidence of the commission of the offence to disappear thereby attracting the offence punishable under Section 201 IPC.

The case of the prosecution

4. A call was received at the Police Control Room ('PCR') at 5:18 am on 20th September 2012 from Suresh Kumar (PW-1), brother of the Appellant, regarding a theft having taken place in their residence. The PCR form (Ex.PW16/A) records that the PCR team reached the place at 5:38 am where they found the dead body of the deceased and household articles lying scattered around. The occupants of the house feigned ignorance of what had happened. An ambulance was called there to take away the deceased.

5. The family members informed the police that they were asleep when they found the Appellant with his hands and feet tied with tape and a lady was found dead and blood was coming out from her mouth. At 6:36 am there is an entry in the right column of the PCR form to the effect that the brother of the husband of the deceased informed the police that they found his sister-in-law dead on the bed. There is another noting to the effect that the husband of the deceased, the Appellant herein, did not saying anything. The brother of the Appellant however told the police that chilli powder was thrown into the eyes of both the deceased and Appellant.

Medical evidence

6. It appears that the Appellant himself was also taken for medical examination, apart from the deceased. His MLC (Ex. PW-6/B) reveals that he was brought to the Rao Tula Ram Memorial Hospital, Jaffar Pur, New Delhi at 7:34 am at 20th September 2012, where he was examined by Dr. Satish Chandra Yadav (PW-6). He did not find any external injury on the body of the Appellant. He however called the eye specialist since chilli powder was mentioned in the case but no injury was found in the eyes of the Appellant by the eye specialist. The eye specialist Dr. Rahul Shah (PW-7) also found chilli powder present in the face but no congestion/redness in the eyes.

7. The post mortem of the deceased was performed by Dr. Parvinder Singh (PW-9) at 11:30 am on 21st September 2012. He found as many as 10 external injuries. In his opinion the cause of death was “due to

asphyxia following ante mortem smothering”. There was no cross examination of this doctor. Consequently, the prosecution was able to prove that the death of the deceased was homicidal.

Investigation

8. It appears that the 3 ½ year old child of the Appellant and the deceased spoke to the police on the date of the incident itself i.e. 20th September 2012. According to the Investigating Officer (‘IO’) Insp. Harender Singh (PW-26), when he reached the spot, the initial version given by the Appellant was that during the night, someone had tied his hands and when he tried to get up, that person had poured chilly powder into his eyes and therefore he was unable to see anything. According to the Appellant, the intruder also tied up his hands and legs and closed his mouth and eyes with the packing tape and as a result, the Appellant was not aware of what had happened in the house.

9. When the IO made inquiries from the child Ayan (PW-22), he disclosed that the accused/Appellant himself had put the tape on the mouth of the deceased. This led to the Appellant being interrogated and arrested. He purportedly gave a disclosure statement (Ex.PW-20/F) admitting to having murdered the deceased and also disclosed that he could get the tape used by him recovered. The Appellant purportedly got one roll of brown colour adhesive tape from under the construction area of the same plot where the house was located.

10. The parents of the deceased also reached the spot and spoke to the IO and told him that the deceased was also being harassed for dowry. Since the death had occurred within seven years of the marriage of the Appellant and the deceased, the parents of the deceased were sent to the office of the Sub Divisional Magistrate ('SDM') Najafgarh where their statements were recorded.

Forensic evidence

11. The brown tape itself was sent to the Forensic Sciences Laboratory ('FSL'). Chance prints were recovered from the pieces of the tape found on the body of the deceased and these were compared with the specimen prints of the Appellant. The report of the FSL (Ex.PW-23/A) stated that the chance prints Q1 and Q2 were 'identical with the right middle and right index fingers marked S2 and S1 respectively on the finger impression slip of Latif @ Dallu s/o Neki Ram (accused)'.

Evidence of the child

12. PW-22, the child of the Appellant and the deceased was examined in the Court on 17th August 2013, where the trial Judge first satisfied himself that he had sufficient maturity to understand the questions that were going to be put to him. He was however not administered an oath as he was only four years old. The transcript of this evidence reads as under:

“Q Where are you residing now a days?

Ans. I am residing with my maternal uncle.

Q What happened with your mother?

Ans. (witness kept mum).

Q What was happened when you were present without mother and father in the house?

Ans. Papa had placed tape on the neck of my mother,

Q What was the colour of the tape?

Ans. After seeing brown colour file child is stated tape was like the colour of file.

Q. What was happened thereafter?

Ans. I do not know.

Q Had police met you after the incident?

Ans. Yes.

XXX By Sh. Umesh Kumar, Ld. counsel for the accused

Q Do you know whether any thief had come to your house?

Ans. No.

Q Whether someone had beaten your father?

Ans. Witness kept mum but shook his head in negative.

Q Do you know the tape?

Ans. Yes. It becomes of brown colour.

It is wrong to suggest that one thief had come in the house and he had tied my mother and father and had robbed some articles from the house. It is wrong to suggest that on the day of incident I was not present at house or that I was in the house of my paternal uncle.”

13. It is seen from this transcript that although the child had given his previous statement under Section 161 Cr PC, the counsel for the accused did not confront him with such statement. Further, the attempt to suggest to the child that someone had come into the house, tied up

his mother and father and robbed articles from the house was clearly refuted by the child. The suggestion to him that he was not present in the house but was with his 'paternal uncle' (which according to learned Senior Counsel for the Appellant should read as maternal uncle) was also denied by the child.

14. At this stage, it is necessary to recapitulate the law regarding the appreciation of the evidence of the child witness. In ***Dattu Ramrao Sakhare v. State of Maharashtra (1997) 5 SCC 341*** the Supreme Court explained:

"A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored."

15. In ***Ranjeet Kumar Ram v. State of Bihar 2015 (6) SCALE 529***, it was observed:

"Evidence of the child witness and its credibility would depend upon the circumstances of each case. Only precaution which the court has to bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one."

16. In *Nivrutti Pandurang Kokate v. The State of Maharashtra (2008) 12 SCC 565*, the Supreme Court highlighted the importance of the trial Judge having to be satisfied that the child understands the obligation of having to speak the truth and is not under any influence to make a statement. The Court explained:

“The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaken and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness.”

17. Mr. Satish Tamta, learned Senior Counsel for the Appellant, submits that in the present case, it is not safe to base the conviction of the Appellant only on the evidence of the child witness and it was necessary for the trial Court to have sought corroboration of the evidence from material particulars.

18. In the present case, the evidence of the child is to the effect that his father had smothered his mother with the brown coloured tape. The fact that the death was homicidal was corroborated by the medical evidence which has been discussed herein before. Additionally, the finger print bureau of the FSL gave a report confirming that the chance prints on the tape found on the neck of the deceased were identical to the specimen finger prints of the Appellant. Consequently, the evidence of the child witness was in fact corroborated both by the medical evidence as well as the forensic evidence.

Alternative defence version not proved

19. Mr. Tamta referred to the depositions of both PW-1 and PW-2 who appeared to support the alternative theories submitted on behalf of the Appellant that on the intervening night of 19th/20th September 2012 someone had entered into their house, tied up the deceased as well as the Appellant, threw chilli powder in their eyes and then robbed the valuable articles before leaving.

20. As already noted the medical evidence does not bear out a critical part of the above alternative theory as no chilli powder was found in the eyes of the Appellant after his check up by the eye specialist. It is also interesting that according to PW-2 (the wife of PW-1 and the sister-in-law of the Appellant), she had to force open the door of the room where the deceased and the accused were lying (allegedly in separate portions). The defence was unable to explain how if the door was not locked from the inside but was merely shut and it was also not

locked from the outside, why PW-2 should have faced any difficulty in opening the door. Added to this fact is the absence of any external injury whatsoever on the Appellant, despite the claims of an intruder tying him up, gagging him and also putting chilli powder in his eyes. The alternative theory put forth by the Appellant was unable to be substantiated.

Motive

21. Mr. Tamta then submitted that according to the prosecution the motive for the offence was the fact that the Appellant was having an illicit relationship with the younger sister of the deceased, PW-24, and that this motive was unable to be proved by the prosecution.

22. The Court would in the first place like to observe that where the prosecution has been able to prove a homicidal death through even one reliable eye witness, the fact that it does not prove the motive for the commission of the offence will not make a material difference in the overall outcome regarding the guilt of the Appellant. In the present case, the Appellant has not been able to persuade this Court that the child is not a reliable witness or that the material portion of his evidence has not found corroboration.

23. While PW-24 did not turn out to be a very reliable witness in as much as she denied in her examination in chief that the Appellant had said anything to her which she could think to be untoward, in her cross examination by the accused she stated “it is wrong to suggest that the

accused never talked with me or that he had no bad intention against me”. It is clear that the PW-24 is not a very reliable witness either for the prosecution or for the defence. However, even if the evidence of PW-24 is kept aside, the unwavering evidence of the child witness, PW-22 who was present at the spot, corroborated by the medical and forensic evidence, leads to the only possible conclusion that it was the Appellant, and no one else, who killed his wife by smothering.

Defence witnesses

24. There were two defence witnesses examined, one was Mohan Lal (DW-1) who was a neighbour and is supposed to have been present when the police reached the spot. However, in his cross examination by the APP, he stated “I have seen the accused in his room. Nobody tried to untie the hands of the accused. I did not see who had tied the hands of the accused.”

25. As far as DW-2 Shiripal is concerned, he too appears to be a neighbour of the Appellant. According to him when the police reached there the Appellant “was not weeping. Nothing was found in his eyes.” DW-2 too stated that he did not know who had untied the hands of the Appellant. He further stated that the hands of the Appellant had already been untied when the police reached the spot.

26. Neither of the above defence witnesses offered any great help to the Appellant. They do not shake the evidence of PW-22 who obviously did not have any motive to falsely implicate his own father.

The attempt to show that he was being tutored by his maternal uncle or by his maternal grandparents also did not succeed.

Conclusion

27. For all of the afore-mentioned reasons, the Court is of the view that the impugned judgment of the trial Court convicting the Appellant for the offences under Sections 302 and 201 IPC and the consequent order on sentence do not call for interference.

28. The appeal and the pending application are accordingly dismissed. The Trial Court record be returned forthwith along with a certified copy of this judgment.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MAY 07, 2018

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