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

+ **CRL.A. 191/2017**

ARUN CHAUHAN Appellant
Through: Mr. Gaurav Vashishth, Advocate.

versus

STATE (GOVT. OF NCT) DELHI Respondent
Through: Mr. Hirein Sharma, APP for the
State along with Insp. Dharam
Dev I.O. and A.S.I Puran
Chand.

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

**JUDGMENT
11.07.2018**

Dr. S. Muralidhar, J.:

1. This is an appeal directed against the judgment dated 9th July, 2016 passed by the learned Additional Sessions Judge (NE), Karkardooma Courts, Delhi in Sessions Case No.44673/2015 arising out of FIR No.1170/2014 registered at Police Station (PS) Gokal Puri, convicting the Appellant under Section 302 Indian Penal Code, 1860 (IPC) and the order on sentence dated 21st, July 2016 whereby he was sentenced to undergo Rigorous Imprisonment (RI) for life with a fine of Rs.5,000/-, and in default of payment of fine to undergo Simple Imprisonment (SI) for six months.

2. The Appellant was charged with having committed the murder of his wife on the intervening night of 14th/15th November, 2014 in a room on the second Floor of House No.C-183, Gali No.7, Ganga Vihar, Gokal Puri, Delhi by strangulating her. The Appellant and the deceased had two children i.e. Pushkar @ Pintu (PW-22) and Janvi @ Khushi (PW-21), both of whom were minors and school going at the relevant time. In the impugned judgment, the trial Court has asked the District Legal Services Authority, North East District, Delhi to consider the case of compensation for both minor children and also make arrangements for their uninterrupted study.

3. The criminal justice machinery was set in motion by a call made to the Police Control Room (PCR) on 15th November, 2014 at around 7.34 am by one Subhash Chand (PW-20), the landlord of the aforementioned premises, conveying the statement of PW-22 "*Hamari Mamma Bed Se Uth Nahi Rahi Hai Behoshi Ki Halat Me Padi Hai*". It was further reduced in writing at PS Gokal Puri as DD No.7A, which was assigned to Sub-Inspector (SI) Ratnu Oraon (PW-24), who visited the spot along with Constable Budh Prakash and found a lady in an unconscious condition in a room on the second floor, lying on a mattress on the floor. One Manoj Chauhan (PW-1), brother of the deceased and other persons were present inside the room. The name of the deceased was conveyed as Kavita, wife of the Appellant.

4. PW-24 then informed Inspector Dharam Dev (PW-25), Station House Officer (SHO), PS Gokal Puri and also recorded the statement of PW-1. The crime team officials were called at the spot and *rukka* was prepared and then sent to the PS for registration of the FIR. The FIR was registered under Section 302 IPC against the Appellant naming him as the offender.

5. The post mortem of the deceased was performed by Dr. Vishwajeet Singh (PW-10) on 16th November, 2014 at around 12.20 PM. He noticed the following external injuries:

“1. Faint ligature mark present completely and horizontally over and below thyroid cartilage. In midline, mark is 6 cm wide and 6 cm below chin. Mark was horizontally and backwards and is 6 cm wide, 4 cm below left angle of mandible. Mark was posteriorly and is 4.5 cm wide and 8 cm below occipital protuberance. The ligature mark goes horizontally forward and is 5 cm wide and 7.5 cm below right mastoid. Mark goes forwards and is 6 cm wide and 4.2 cm below right angle of mandible and further meets in midline front of neck. Neck circumference is 39.5 cm. Skin tags present at places.

2. Reddish bruise 1.2 x 0.4 cm present over inner mucosal aspect of lower limb in midline.

3. Reddish bruise of size 5 x 2.1 cm present over left side neck, .5 cm from midline and 2 cm below chin.”

6. As far as internal injuries were concerned, PW-10 noticed the condition of the neck as under:-

“Neck – Bruising of bilateral carotid sheath and neck muscles present with extravassation in surrounding tissues.”

7. The epiglottis was congested. The opinion given by PW-10 to the cause of death was “Asphyxia as a result of ante mortem ligature strangulation”.

8. Subsequently, a shawl was produced before PW-10 and after examining it on 19th December, 2014, he gave an opinion that a ligature mark around the neck of the deceased corresponded with the ligature material i.e. shawl and that injury No.1 mentioned in the post mortem report was sufficient to cause death in the ordinary course of the nature.

9. The Appellant was not found at the spot when the police reached there. PW-25, the investigating officer (IO) prepared a site plan (Ex.PW24/C) and recorded the statements of PW-20, PW-21 and PW-22 and also that of PW-20's son, Ranjan @ Raj (PW-4), who was also present at the spot. On the same day i.e. 15th November, 2014, the Appellant was arrested at around 8 pm at a place near Tyre Market, Main Wazirabad Road, Gokal Puri, Delhi. The Appellant is stated to have made a disclosure statement (Ex.PW24/H) and offered to get recovered the shawl from the tenanted premises. He led PW-24 and PW-25 to the room and pointed out the shawl, which was lying in one

corner. This was taken into possession and a seizure memo was prepared.

10. PW-25 also collected the call detail records (CDRs) of the mobile phone belonging to PW-4 having number 8447547210 which had been used by PW-22 to make call to the police. PW-25 also collected CDR of the mobile phone of the Appellant which had been used by the deceased one day prior to her killing to make a call to her mother Smt. Usha Chauhan. Further on the date of incident itself, the Appellant had made a call to his mother-in-law and passed on some information regarding the commission of crime. The Appellant is also found to have made a call at 7 am to the phone of Akash @ Soni at his mobile no. 8585992235.

11. As far as PW-21 and PW-22 were concerned, their statements under Section 164 of the Code of Criminal Procedure, 1973 (Cr PC) (Ex.PW19/3 and Ex.PW19/4) were recorded before the learned Metropolitan Magistrate.

12. The case of the prosecution is that the Appellant suspected his wife of having an illicit relationship with the said Akash @ Soni. The case of the prosecution is that this was the motive for the crime. It is further the case of the prosecution that on the same night i.e. the night of 15th November 2014, the Appellant murdered the said Akash @

Soni with a knife. A separate FIR was registered in that regard. The trial in that FIR against the Appellant is underway.

13. After the charge sheet was filed in the present case, the trial court on 7th April, 2015 framed the aforementioned charge against the Appellant. For the prosecution, 25 witnesses were examined.

14. The incriminating circumstances were put to the Appellant under Section 313 Cr PC. His reply to most questions was “I do not know” or “It is incorrect”. He offered no alternative explanation as to where he might have been on the morning of 15th November, 2014, when his children i.e. PW-21 and PW-22, on returning home from their tuition at around 7.30 am found their mother lying on the bed in an unconscious state. He simply claimed that he has been falsely implicated by the police since “my landlord and his relatives are police officials”. The Appellant also did not lead any defence evidence.

15. In the impugned judgment, the trial Court has, after discussing the evidence in great detail, come to the conclusion that there was no reason for the court to disbelieve the two child witnesses i.e. PW-21 and PW-22. Both of them mentioned that their father i.e. the Appellant had beaten their mother on the evening of 14th November, 2014 and then asked them to go to a separate room. The next morning i.e. 15th November, 2014 at 6 am, the Appellant woke up his daughter PW-21 and asked her to leave for tuition along with her brother PW-22 who

had also woken up. PW-21 stated that the Appellant had told her that their maternal uncle would come to pick them up. He also handed over Rs.150/- to PW-21, who gave it to her brother PW-22. When they came back, they found their mother in an unconscious state and also that their father was not present.

16. The trial Court also noted that the evidence of PW-21 proves that the accused was in the company of the deceased last prior to her death. PW-20 also corroborated the versions of PW-21 and PW-22 by stating that he saw the accused around 7/7.05 am outside the house and noticed him going somewhere with one Akash @ Soni on a motorcycle. Manoj Chauhan (PW-1), the brother of the deceased and Smt. Usha Chauhan (PW-3), the mother of the deceased also corroborated the versions of PW-21 and PW-22. According to them, the accused used to beat the deceased after consuming liquor. On 15th November, 2014 they received information from the Appellant as well as PW-20 that the deceased was lying unconscious. PW-1 and PW-3 immediately rushed to the house and noticed the deceased lying on the bed with dried blood stains on the neck. She had also urinated in her clothes and on the bed sheets and no one was present there. They found the two children weeping and the two children disclosed to them i.e. their uncle and the grand-mother all the facts regarding the beating of the deceased by the father and them being sent to tuition forcibly early in the morning.

17. With the Appellant not offering any explanation for the injuries suffered by the deceased, upon being last seen in the Appellants company and her having died in the night, an adverse inference is bound to be drawn against the accused in terms of Section 106 of the Indian Evidence Act, 1872 (IEA). The trial Court also dealt with certain contradictions pointed out by learned counsel for the accused by concluding that the police did not make any difference to the case of the prosecution as the testimonies of the two witnesses were unshaken. The post-incident conduct of the accused was also noticed.

18. The trial Court observed that though proving of the motive is not material, when all other circumstances were proved beyond doubt, the testimony of PW-20 about seeing the Appellant in the company of Akash @ Soni on the date of the incident and the evidence of PW-25 that one Akash @ Soni was murdered on the same day for which the Appellant is facing trial has proved that there was a motive for the accused to commit the murder of the deceased. The medical evidence also proved that the death was homicidal.

19. As regards the recovery of the shawl with the assistance of the Appellant, the trial Court concluded that he could not be excluded merely because PWs 24 and 25 had deposed that they had seen the shawl among the clothes lying in the room. The site plan (Ex.PW-5/B) proved the exact location of the recovery of the shawl and there was no doubt that it was recovered at the instance of the accused. The

medical evidence also proved that the shawl could have been used in strangulating the deceased. The CDRs and mobile phones collected proved the calls made by the Appellant to PW-1 and PW3 informing them about the incident on the morning of 15th November, 2014 and also the calls made to Akash @ Soni.

20. The trial court accordingly concluded that the prosecution had proved the guilt of the Appellant with regard to the murder of his wife beyond reasonable doubt and proceeded to sentence him for the same.

21. The two star witnesses of the prosecution who have spoken about what transpired immediately prior to the killing of the deceased are the two children of the Appellant and the deceased i.e. Baby Janvi (PW-21) who was 12 years of age and Master Pushkar @ Pintu (PW-22) who was 15 years of age. The Court has carefully perused their testimonies.

22. Concerted attempts were made by the counsel for the accused, in the cross examination of PW-21, to suggest that she has been tutored by her uncle and the maternal grand-mother (PW-1 and PW-3 respectively), with whom they stayed after the incident. Although the child did state that “on the last visit to court, my maternal uncle and police official told me as to what I have to depose. Vol. I have deposed whatever I saw.” She was clear about her father having beaten her mother on the evening of 14th November, 2014 pursuant to

a quarrel. When asked for the reason of the quarrel she volunteered that that they were sitting and suddenly the elbow of the deceased touched the Appellant and he slapped the deceased.

23. There are certain features of the evidence of PW-21 which lends assurance to the court that she is both a natural witness and speaking the truth and was not tutored by anyone else. Subsequently, she stated that when she left in the morning for tuition on 15th November, 2014 her father told her that “he was going to jail and will never come back.” On hearing it the child started weeping, the Appellant also started weeping with her. She further stated that “my father did not disclose me about the reason for his going jail despite my asking but he repeated that he was going to jail for forever”.

24. Certainly, the above statement of this child could not have been as a result of being tutored. When the children returned they found their father missing and their mother lying on the bed of the floor. This entire sequence of events - the father waking up the children for tuitions earlier than their usual time - has been fully corroborated by PW-22. He firmly denied any suggestion about being tutored. He too stated that there was no specific reason for the quarrel but “my mother put her elbow on the thigh of my father and he slapped her.” He further stated “my father used to beat my mother and some time he used to burn her by bidi.” PW-22 too stated that his sister woke him up earlier than usual suddenly on the morning of 15th November, 2014 at

about 5.30/6 am. He asked his father why he had to go so early since “light of the neighbor was not on and it was not a time of going to tuition.” However, his father scolded him and sent him to the tuition. He stated that after the tuition time was over, his sister gave him Rs.150/- and told him that it was given to her by their father.

25. Both children have spoken about finding the landlady trying to get the door opened when they returned. PW-22 put his hand inside the door and opened it from the inside. They then noticed the deceased lying on the bed on the floor.

26. Mr. Gaurav Vashishth, learned counsel for the Appellant, sought to suggest that it is only the children who could have opened the door from the inside due to their small hands and no adult could have done it and, therefore, it is not possible that the locking of the room from the inside could have been done by the Appellant. No such suggestion was made either to PW-21 or PW-22. For that matter, neither PW-21 nor PW-22 was confronted with their previous statements including the statement made under Section 161 Cr PC to bring about any contradictions. These are not matters for inference. The core portion of both testimonies of PW-21 and PW-22 is that the person last to be seen in the company of their mother was the Appellant. They spent the night together in the same house. In the morning, the children were sent away for tuitions and when they returned they found their mother lying on the floor in an unconscious state and their father missing.

Both children are consistent with this version. They are also consistent about the father beating the mother on the previous night. Consequently, the Court concurs with the trial Court that the testimonies of both the children are consistent and reliable.

27. Mr. Vashishth submitted that the testimony of PW-20 reveals that the premises given on rent to the Appellant was a one room set and not a two room set and, therefore, the version of the children that they were asked to go to another room by the father after he had beaten their mother was unbelievable. The Court has perused the site plan drawn by PW-25 as well as the scaled site plan and finds that it, in fact, depicts a two room set. No question was put to PW-25 that the site plan was wrongly drawn up.

28. Learned counsel for the Appellant then submitted that the alleged recovery of shawl at the instance of the Appellant was totally unbelievable. He referred to the evidence of PWs 24 and 25. Both of them admit to seeing the shawl in the premises when they reached the spot. Reliance is placed on the judgment in *Brijpal v. State 2011 (3) AD (Del) 722* that the shawl was actually planted and the recovery shown at the instance of the Appellant was not reliable when the police already knew of the presence of such shawl.

29. The trial Court has rightly noted that the police could not have known that the said shawl was used in the commission of the crime till

the Appellant was arrested and made a disclosure statement. Strangulation could be by any means or any cloth/wire and not necessary only by a shawl. This was exclusively in the knowledge of the Appellant and, therefore, his disclosure under Section 27 of the Indian Evidence Act, 1872 became significant. This was not a fact that could have been known to the police earlier to the arrest of the Appellant.

30. It is then submitted that the motive for the commission of crime is not proved since there was no evidence led to show that the deceased had any illicit relationship with Akash @ Soni. It is further submitted that if the Appellant is still facing trial, it could not be for the alleged murder of the Akash @ Soni on the same day, that is, 15th November 2014. It cannot be said with certainty that it is the Appellant, who was involved in the crime and that he murdered his wife as a result of his suspecting her of having a relationship with said Akash @ Soni.

31. What the prosecution has been able to prove is that on the date of the incident three calls were made to Akash @ Soni by the Appellant. The CDRs of the mobile phone used by the Appellant have proved the said three calls. These calls are made on 6:46, 6:59 and 7:02 am. Further, PW-20 saw the Appellant with the said Akash @ Soni at around 7:00/7:05 am on a motorcycle being driven by the Appellant. Therefore, the Appellant was last seen with the said Akash @ Soni. It cannot, therefore, be said that there is no evidence at all led by the

prosecution with regard to the Appellant suspecting a relationship between his wife and the said Akash @ Soni.

32. The CDRs have also corroborated the testimonies of PWs 1 and 3 about the calls made by the accused on the morning of 15th November, 2014 that the deceased was unconscious and was not responding. When this is read in the context of what the Appellant told his daughter about his going to jail, all the loose ends of the case can be stated to have been tied up by the prosecution convincingly.

33. The chain of circumstances as identified by the trial Court was complete with all the above links which have been proved by the prosecution convincingly and beyond reasonable doubt. They point to the guilt of the Appellant and no one else. Consequently this Court finds no ground to interfere with the conclusion arrived at by the trial Court.

34. The appeal and application are accordingly dismissed. The trial court record be returned forthwith together with a certified copy of this judgment.

S. MURALIDHAR, J.

VINOD GOEL, J.

JULY 11, 2018

shailendra/snd/dkb