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

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CRL.A. 565/2016

ALI IMAM

.... Appellant

Through: Mr. Kanhaiya Singhal, Advocate
(DHCLSC).

versus

STATE

..... Respondent

Through: Mr. Hirein Sharma, APP for State

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE VINOD GOEL

JUDGMENT

03.07.2018

Dr. S. Muralidhar, J.:

1. This is an appeal against the judgment dated 30th January, 2016 passed by the learned Additional Sessions Judge-02, South-East District, Delhi in Sessions Case No.24/2014 arising out of FIR No.75/2014 registered at Police Station ('PS') Jamia Nagar, Delhi convicting the Appellant of the offence punishable under Section 302 IPC and the order on sentence of the same date whereby he was sentenced to undergo Rigorous Imprisonment ('RI') for life with a fine of Rs.2,000/- and in default of payment of fine to further undergo RI for three months.

2. The charge against the Appellant was that on the intervening night of 26th/27th January, 2014, at his residence in Jamia Nagar, the Appellant murdered his wife by strangulating her with an electric wire.

3. DD No.12A was recorded at PS Jamia Nagar at 9.35 am noting that there was a PCR call about a lady having been murdered at M-59 Abul Fazal Enclave by her husband. The PCR Form (Ex.PW-9/A) reveals that a call was made to the police at around 9.30 am by one Md. Tahir which reads “M-59 Abul Fazal Part-I, 6 No. *pulia mera kirayedar apni wife ko jaan se maar kar chala gaya*”. A further noting in the same PCR form at around 10:12 AM is *inter alia* to the effect that the accused i.e. the Appellant had already been apprehended at the spot by that time.

4. Sub-Inspector Rishi Sharma (PW-17) posted at PS Jamia Nagar on receipt of DD-12A reached the spot along with Const. Md. Hasan (PW-11). There he met Md. Shahid (PW-1) who handed over the Appellant to PW-17 informing him that the Appellant resided with his wife in a room on the first floor of the house at M-59, Abul Fazal Part-I, New Delhi. PW-1 disclosed to PW-17 that the Appellant had informed him that his wife had died and had then tried to run away. He was chased by PW-1 and PW-1's relative and apprehended near Char Minar Masjid and brought back to the spot. Thereafter, the police was called.

5. When PW-17 inspected the spot he noticed the dead body of the deceased namely Razia Tabbasum lying on the floor on a mat. He noticed that there were some marks on her neck. A wire and a pair of scissors were lying there. Inside the room there was a television. Its wire was also cut and was hanging on a hook. PW-17 then called the crime team to the spot.

6. The Court has perused the report of the crime team (Ex.PW-10/A). The time of examination is shown as 10.30 am to 11 am on 27th January, 2014 the time of occurrence is shown as 'not known', even though the Appellant had already been apprehended by then. By this time, the Appellant is stated to have made a disclosure to PW-1 about having murdered his wife at around midnight on the intervening night of 26th/27th January, 2014. However, as will be noticed later, nothing much turns on this omission.

7. The seizure memo (Ex.PW-1/E) shows that among the articles seized was a 38 cm black wire apart from an 85 cm wire which appears to have been affixed with the wall. The post-mortem report of the deceased was performed by Dr. Kartik Krishna (PW-12) on 28th January, 2014. The post-mortem report (PW-5/B) gave the opinion that the cause of death was 'asphyxia due to combined effect of manual as well as ligature strangulation'. A subsequent opinion (Ex.PW-12/A) was given by PW-12 after seeing the seized wires which held both wires i.e. of 38 cm length and 85 cm length would

individually be sufficient for strangulation; when sufficient force had been used to exert pressure on the neck. The cross-examination of PW-12 by the learned counsel for the defence did not yield much.

8. After the charge-sheet was filed, charge was framed against the Appellant by an order dated 10th July 2014 of the Trial Court. The prosecution examined 18 witnesses at the trial. The principal witness of the prosecution was Md. Shahid (PW-1), the landlord of the premises where the dead body of the deceased was found. According to him, on the morning of 27th January 2014, the Appellant came to him and told him about the death of his wife, took PW-1 to his room where the dead body was lying on the floor and then tried to flee. PW-1 stated that he had apprehended the Appellant thereafter with the help of Tahir, the brother of PW-1. PW-1 disclosed that the Appellant had taken the room on rent about 3 months prior thereto.

9. In his cross-examination PW-1 denied the suggestion that the Appellant had left for his duty as a crane operator on the night of 26th January, 2014. According to him, “I had seen accused present at his home at 09:30 pm and he bolted the doors from inside”. He further volunteered that “it is true that it was the accused himself who told him at about 08:30 am about the death of his wife. It is true that my brother had already left his room till then. When accused told him about the death of his wife, I was present at my shop on the ground floor of the building. Accused had come to me from his room and he

led me there”. PW-1 maintained in his cross-examination that the Appellant had tried to abscond but was caught.

10. The other public witness was Mobin (PW-2) who stayed in the room adjacent to the room of the Appellant and his wife. In his cross-examination, PW-2 also maintained that on the night of 26th January, 2014, the Appellant took his meals in his room and remained there. PW-2 further stated “it is true that I did not see him sleeping in his house. (Vol.) I saw slippers lying outside his room”.

11. Gulshan Ara (PW-3), the cousin of the deceased turned hostile with regard to having spoken about the Appellant harassing/beating his wife. However, the father of the deceased Md. Mustafa (PW-4) and another cousin of herself Md. Arshad Azim (PW-8) deposed to that effect. Both of them maintained that the Appellant would threaten and beat the deceased and accused her of having illicit relations with somebody else.

12. In his statement under Section 313 Cr PC, the Appellant strangely made an admission to the following effect:

“Q.12 It is in evidence against you that on 27.01.2014, you were arrested by the Inspector G.S. Rawat in the presence of Mohd. Shahid vide arrest memo Ex.PW1/G, your personal search conducted vide memo Ex.PW1/D, your disclosure statement Ex.PW1/B was also recorded. What you have to say?

Ans. It is correct that I was arrested by Inspector G.S. Rawat in the presence of Mohd. Shahid. It is correct that I disclosed to police that I had murdered my wife and the manner in which I killed her. I state that on the date of alleged incident, I was in the factory where I was working and on the beatings given by police, I had disclosed the above facts to them.”

13. However, when asked he had anything else to say, the Appellant stated as under:

“I am innocent and have been falsely implicated in the case. On the night of alleged incident, I was on duty in factory. The owner of my premises made call to the police and got me implicated in the present case. He also got me arrested in this case.”

14. In order to prove his alibi, the Appellant examined in his defence Shri Jagvinder (DW-1) who was working as in-charge of S.B. Transport Company, Okhla, Phase-I, New Delhi where the Appellant was employed for about one year prior to his arrest. DW-1 stated that the Appellant was employed as Hydra Crane Operator. He brought the attendance register of employment of the Appellant for the month of January, 2014 which did not bear his signature or the seal of the firm anywhere. He also brought a copy of the muster-roll (Ex.DW-1/A). According to the entry on 26th January, 2014, the Appellant was shown as ‘P/L’. DW-1 explained that this meant that the Appellant had come for duty and then gone on leave.

15. In his cross-examination by the APP, DW-1 admitted the following:

“it is correct that as per entry of muster roll of the date 26.01.2014, the accused had come for some time in the office and stated that he was not feeling well and he took leave, so it was shown in the muster roll as P/L that means accused present in the office and then, left. It is correct that 26.01.2014 being the holiday, there was no work being done in the office or at the site. It is correct that accused Ali Imam did not work in our office in our site in the night of 26.01.2014. I was working as supervisor in the office and also on the site. Accused was employed on crane to pick up the container and to shift the empty containers on trucks by loading them on trucks and unloading them. It is correct that accused Ali Imam was not on the duty in the night of 26/27.01.2014. It is also correct that the work on our site for loading and unloading started on 27.01.2014 and 25.01.2014 in the night.”

16. Consequently, the above deposition of DW-1 did not help the Appellant one bit to establish that he was not present in his house on the intervening night of 26th/27th January, 2014.

17. The other defence witness was Vishwajeet (DW-2) who also worked in the S.B. Transport Company, looking after the Human Resource Department. He was unable to identify the Appellant as he had not seen him during his employment in the company. When asked to explain the entry in the muster-roll, he stated “it is correct that as per entry dated 26th January, 2014, Ali Imam had come and then, went on leave. It is also correct that as per muster roll Ex.DW1/A, Ali Imam

had come on the site for work during day only.” Consequently, even DW-2 failed to support the plea of alibi of the Appellant.

18. The trial Court has in the impugned judgment discussed the evidence in great detail and concluded that the prosecution was able to prove beyond reasonable doubt that it was the Appellant and no one else who murdered his wife. It was concluded that the medical opinion was consistent with the case of the prosecution that the Appellant had strangled his wife and caused her death. The further conclusion, which appears to be correct, was “there was nobody else in the room except the accused with his wife on the night of alleged incident, thus it can be safely inferred that it was accused who murdered his wife by strangulation and nobody else.”

19. This Court has heard the submissions of Mr. Kanhaiya Singhal, learned counsel for the Appellant and Mr. Hirein Sharma, learned APP for the State.

20. It was sought to be submitted by Mr. Singhal that there was a peculiar aspect to the case which was not properly investigated by the police. It is pointed out that in the written request made by the Investigating Officer to the Department of Forensic Medicine and Toxicology, AIIMS (Ex.PW-5/B), it was noted that the lower part of the body of the deceased ‘was without clothes’ whereas in the post-mortem report (Ex.PW-5/D) against the heading ‘clothes worn and

their condition', it is noted that the deceased was wearing 'a bluish-green-grey stripped kurta top, same coloured pant'. It is submitted that the possibility of someone else committing rape of the deceased and then strangulating her was not examined.

21. The Court finds that this was a case where, as is evident from the scaled site plan (Ex.PW-7/A), the Appellant and his wife lived in a single room on the first floor which had four other rooms, three on the other side of the passage and one next to the room where the deceased was found. There was a single door leading to the room. The toilet and bathroom were shared by all the rooms as was the single kitchen at the end of the passage. No suggestion has been made to the landlord (PW-1) about the possibility of anyone else entering the room and committing the crime.

22. It must be noted here that Mobin (PW-2) is the brother of PW-1, the landlord, and he occupied the room immediately next to the room of the Appellant and his wife. The rooms across the passage were of Md. Yamin, another brother of the landlord and one Arif, both of whom were not examined. However, no suggestion has been given to PW-2 about the possibility of someone else entering the room and committing the crime.

23. Section 106 of the Indian Evidence Act, 1872 is attracted in the facts and circumstances of the case. With the prosecution having been

able to show that there was no opportunity for anyone else to be present in the room on the intervening night of 26th/27th January, 2014 and also that the deceased was living with the Appellant in that room, a presumption of the culpability of the Appellant stood attracted and the burden fell on him to show that he was not present in the room at the time of the killing of his wife. On the contrary, as has been discussed hereinabove, the evidence of PW-1 is categorical that he noticed the Appellant in his room after he took his meals and that the Appellant had bolted the room from the inside. Even PW-2 talks about noticing the Appellant's slippers outside his room after he took his meal. The defence witnesses have also not been to prove that the Appellant was present at work on the intervening night of 26th/27th January 2014.

24. Therefore, whatever may be the lapse as regards the police correctly recording the absence of any clothes on the lower part of the body of the deceased, it does not help the Appellant to develop an alternative theory that the crime was committed by any other person. As far as the motive of the commission of the crime is concerned, again the depositions of the father (PW-4) and cousin brother of the deceased (PW-8) respectively are sufficient to prove that the Appellant suspected the deceased of being in an illicit relationship with someone else and his subjecting her to harassment and beatings.

25. It is argued that the length of the wire that was recovered was 38 cm and this was insufficient to strangle the deceased particularly since the post-mortem report noted that the circumference of her neck was 33 cm. Unfortunately, there was no cross-examination of the doctor (PW-12) on this aspect. He was categorical that the death of the deceased was due to both, manual strangulation as well as ligature strangulation which could have caused with the hands, or by using either or both of the wires recovered by the police.

26. Having carefully examined the evidence on the record and impugned judgment of the trial court, the court is satisfied that no error has been committed by the trial court in coming to the conclusion that it is the Appellant and no one else who murdered his wife by strangulation.

27. There is no ground made out for interference with the impugned judgment and the consequent order on sentence of the trial court. The appeal is accordingly dismissed. The trial Court record be returned forthwith together with a certified copy of this judgment.

S. MURALIDHAR, J.

VINOD GOEL, J.

JULY 03, 2018

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