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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A. 1354/2012

KARAMVEER @ SONU

.... Appellant

Through: Mr. Sakesh Kumar with Ms. Rita
Kumar and Ms. Sonam Nagrath
Kohli, Advocates.

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through: Ms. Kusum Dhalla, APP
for State with SI Pradeep Kumar, PS:
Kapashera.

CORAM:

**JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA**

**ORDER
10.01.2018**

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Dr. S. Muralidhar, J.:

1. This appeal is directed against a judgment dated 5th September, 2012 passed by the learned Additional Sessions Judge, Dwarka Courts in Sessions Case No. 49 of 2010 arising from FIR No. 121 of 2010 registered at Police Station (PS) Kapashera convicting the Appellant for the offence under Section 302 IPC. The appeal is also directed against the order on sentence dated 13th September, 2012 whereby for the aforementioned offence the Appellant was sentenced to imprisonment for life along with a fine of Rs.25,000 and in default to suffer simple imprisonment (SI) for a period of 6

months.

2. The prosecution case began with a call being received at the Police Control Room (PCR) at 1:43.58 a.m. on 23rd June, 2010 from the Appellant's mobile number (9717405214) that a quarrel had taken place at Bharthal village near Community Centre. As it emerged later from the records of the said mobile number, which is also noted in the PCR form (Ex.PW-22/A), there was one earlier call made at 1:34:51 am as well. The making of the call was noted down by a Woman Constable (W. Ct.) Santosh who was on duty at that time. By the time the trial took place, however, W. Ct. Santosh had expired and the fact that she had filled up the said PCR form was proved by W. Ct. Sushma (PW-22).

3. The said call was directed to the PCR South-West where Constable Ram Raj (PW-6) was posted. He then accompanied Head Constable Ramanand (PW-7) to the spot. On the way to the spot, PW-7 himself again called up the mobile number of the Appellant and told him to come near the police vehicle on hearing the siren of the vehicle. When both PWs 6 and 7 (Zebra 89) reached the Community Centre at village Bharthal, the Appellant, disclosing his name as Karamvir, approached the vehicle.

4. Both PWs 6 and 7 have stated in their depositions in the Court that the Appellant told them about having strangled his wife with a *dupatta*. However, the trial Court rightly rejected this part of the evidence as being inadmissible in view of Section 25 of the Indian Evidence Act, 1872 (IEA). It was further deposed by PWs 6 and 7 that after reaching the spot and meeting the Appellant, they entered his house. There they found his wife

Anju (the deceased) lying on the cot with her eyes protruding outwards and mouth open.

5. Both PWs 6 and 7 deposed that the Appellant told them that his parents were staying in another house nearby. He then left to call his parents. By the time the Appellant returned with his parents, the Station House Officer (SHO) of PS Kapashera, Inspector T.R. Punia (PW-21), also reached the spot. Meanwhile, SI Vikram Singh had already reached there. The Appellant was arrested. His personal search was conducted and his disclosure statement recorded (Ex.PW-10/C).

6. The post-mortem of the deceased was conducted by Dr. B.N. Mishra (PW-12). The post-mortem report (Ex.PW-12/A) noted the following external injuries on the body:

(1) Ligature mark present on the antero-bilateral aspect of neck at the level of below thyroid cartilage with horizontally placement appearing scattered and interrupted in nature and no uniform distribution in respect of grooving or width. The total length of ligature mark is 15.0 cm with 3-4 cm in width. The marginal area and surface of the ligature mark found abraded-bruised with reddish brown in colour and least hardened on touch. On dissection of the area (neck) multiple scattered bruises and haemorrhagic spots revealed on the both sides of larynx thyrohyoid and cricothyroid muscle with fractured superior horns of thyroid cartilage and cricoids cartilage along with collection of blood clot adjacent to fractured site. Numerous haemorrhagic sports present on the surface laryngeal mucosa.

(2) Two apartly placed bruises of size 2 cm x 1 cm and 1 cm x 1 cm present on the right shoulder (upper surface) with reddish brown in colour. One abrasion of size 2 cm x 1 cm

present on the back part of the right elbow with reddish brown in colour.

(3) One bruise of size 2.5 cm x 1.5 cm present on the lateral aspect of right thigh with reddish brown in colour.

(4) One contusion of size 10 cm x 3 cm present on the upper part of the chest with revealed dark red colour blood clot on section of it.”

7. As far as neck portion concerned, it was observed as under:

“The hyoid bone, thyroid cartilage fractured along with multiple bruising and haemorrhagic spots into the soft tissue of neck as mentioned in external injury no.1.”

8. The cause of death was noted as asphyxia caused by ligature strangulation by using clothes (*chunni/dupatta*) like ligature material. It is further noted that external injury No. 1 was sufficient in the ordinary course of nature to cause death. The medical evidence clearly proved that the death was homicidal.

9. On the completion of the investigation, a charge sheet was filed in which the motive for the Appellant to kill his wife was traced to the Appellant having come to know about his wife having illicit relations with a person named Uttam Kumar. It was stated that on 19th June, 2010 the Appellant had caught the deceased and Uttam Kumar red-handed. It is stated that with the help of his associates, he had given Uttam Kumar strong beating in front of his wife. Thereafter the Appellant called his brother-in-law, Rishi Dass, the brother of the deceased (who later on was examined as DW-1) to his house and then both of them got the said Uttam Kumar murdered at Daruhera at the hands of the associates of the Appellant.

10. It was stated that since the deceased was the only eye-witness to the beatings given by the associates of the Appellant to Uttam Kumar, she often used to threaten the Appellant that she would disclose this information to the police. It was stated that for this reason, the Appellant killed her. In the charge sheet it was further stated that FIR No. 118 of 2010 under Sections 365/302/34 IPC was registered at PS Sarojini Nagar in regard to the killing of the said Uttam Kumar.

11. It emerged in the course of the trial that both the Appellant as well as DW-1 stand charged with the murder of Uttam Kumar in the charge sheet filed in the case arising out of the FIR No. 118 of 2010. They both were, during the pendency of the trial in this case, in judicial custody in that case as well.

12. The prosecution examined 23 witnesses in the present case. The father of the deceased, Shri Ram Dass, was examined as PW-11. He turned hostile. In his statement to the police earlier, he had said that the Appellant had made an extra judicial confession to him when he had reached the spot about having had a quarrel with his wife over cooking of food upon which the deceased had slapped the Appellant and the Appellant in a fit of anger strangled her to death. However, while deposing in Court, PW-11 denied making any such statement to the police. He also resiled from his previous statement to the effect that the Appellant used to take excessive liquor and would beat the deceased regularly; that in 2009 there was a quarrel between the Appellant and his wife pursuant to which the deceased had come to her parents' house and stayed there for 4 months and thereafter PW-11 had

prevailed upon the Appellant to take the deceased back to their house.

13. What PW-11 did, however, admit in his deposition in the Court is that on 22nd June, 2010 Manoj, the younger brother of the Appellant, had telephoned PW-11 stating that a quarrel had taken place between the Appellant and his wife. PW-11 admitted to have sent in his younger son, DW-1, to the house of the Appellant and deceased to find out what had happened. PW-11 further admitted that when DW-1 reached Bharthal, he called PW-11 and told him that nothing serious had happened and that it was a *nocha khasoti* i.e. a simple quarrel had taken place between the Appellant and his wife.

14. Departing from his earlier version, PW-11 deposed in Court that he asked DW-1 to stay there for the night. He further stated that DW-1 had gone with the Appellant to the house of the Appellant's parents which was at a distance of 500 meters for the night in order to avoid any further quarrel between him and his wife; there both the Appellant and DW-1 had taken liquor and slept; thereafter in the morning of 23rd June, 2010 DW-1 telephoned PW-11 stating that the condition of the deceased was very serious and asked him to reach Bharthal immediately.

15. According to PW-11 when he reached Bharthal, he found a huge crowd gathered in front of the Appellant's house. The exact words used by PW-11 in his examination-in-chief in Court read as under:

“Karamvir was in an intensely drunken condition. The neighbours were whispering into the ears of each other saying that it is not clear as to how has it happened. I saw the dead body of Anju, it was lying on the back seat of a Maruti van, parked in front of Karamvir's house. I only saw

the face of Anju and her remaining body was covered with a cloth.

I asked Karamvir as to what had happened. He told me that Anju has died because of his mistake. He also told me that had he been present in the house, Anju may not have died.”

16. The prosecution had earlier, at the time of filing of the charge sheet, named Rishi Dass, the brother of the deceased as a witness. However, he was subsequently dropped as a prosecution witness. He was then examined by the Appellant as DW-1.

17. In his statement under Section 313 Cr PC, the Appellant denied most of the circumstances put to him. However, there were some circumstances which he either admitted as being ‘correct’ or stated ‘I do not know’. The following circumstances are significant in this regard:

“Q.3. It is in evidence against you that on 22.6.2010, Manoj, the brother-in-law of Anju telephoned PW-11 Ram Dass that a quarrel has taken place between Anju and Karamvir. PW-11 Ram Dass sent his younger son Rishi Dass to your house to inquire about the reason of quarrel and he told his father that it was a small trifle and he would prevail upon you and Anju. What have you to say?

Ans. It is correct.

Q.4. It is in evidence against you that Rishi Dass also told his father PW-11 Ram Dass that there was a scuffle (nocha Khasoti) between you and Anju. What have you to say?

Ans. It is correct.

Q.5. It is in evidence against you that PW-11 Ram Dass asked his son Rishi Dass to stay at your house for the night

and Rishi took you to your father's house, which was at a distance of about 500 mtrs. from your house, in order to avoid any further quarrel between you and your wife. What have you to say?

Ans. It is correct.

Q.6. It is in evidence against you that in the house of your father, you and Rishi Dass took liquor. What have you to say?

Ans. It is incorrect. We had taken liquor outside the house.

Q.7 It is in evidence against you that in the morning on 23.6.2010, Rishi Dass telephoned his father saying that the condition of Anju is very serious and asked him to reach Bharthal immediately. What have you to say?

Ans. I do not know.

Q.8 It is in evidence against you that when father of Anju reached your house and at that time you were in an intensely drunken condition and neighbours were whispering that it is not clear as to how has it happened. What have you to say?

Ans. It is correct.

Q.9 It is in evidence against you that when Ram Dass asked you as to what had happened, you told him that Anju has died because of your mistake. What have you to say?

Ans. I do not know as I was not in my senses at that time due to death of my wife.

Q.10 It is in evidence against you that Anju was cremated by her father. What have you to say?

Ans. It is incorrect. She was cremated by our son.

Q.11 It is in evidence against you that on 23.6.2010, at about 1.45 AM on receiving an information regarding a quarrel near Community Centre, Bharthal Village, PW-2 ASI Mahinder Singh recorded DD No. 5A, a copy of which is Ex. PW2/A. What have you to say?

Ans. I do not know.”

18. It is significant that Question No. 9 above which concerns the extra judicial confession made by the Appellant to his father-in-law (PW-11) he used the words “I do not know as I was not in my senses at that time due to the death of my wife.” In other words, he did not state that the said suggestion was incorrect. Further significantly, in response to Question No. 11 about himself making a call to the police regarding the quarrel, he again said “I do not know”.

19. As regards the Appellant actually having made that call, the evidence of Vishal Gaurav (PW-23) Nodal Officer, Bharti Airtel Limited, confirmed that the said mobile number 9717405214 which is noted even in the PCR form was a mobile connection issued by Airtel in the name of the Appellant. Even the customer application form Ex.PW-23/A was produced to prove this. Significantly, in his statement under Section 313 Cr PC the Appellant does not deny that the said customer application form was in fact filled up by him. Therefore, the prosecution has been able to prove that it was the Appellant who gave a call to the police in the early hours of 23rd June, 2010 soon after 1:30 am.

20. The crucial question that engaged the attention of the trial Court was

whether it was the Appellant alone who was present with his wife on the fateful night i.e. the intervening night of 22nd and 23rd June, 2010 or as claimed by him he was elsewhere. The definite case set up by the Appellant by examining DW-1 and through the deposition of PW-11 was that he was in the intervening night of 22nd and 23rd June 2010, at the house of his parents which was only 500 meters away from his own house at Bharthal. In order to prove this, the Appellant examined his own brother-in-law DW-1 as a defence witness.

21. DW-1 Rishi Dass deposed that after he and the Appellant left the Appellant's house on the night of 22nd June, 2010, they had consumed liquor together and thereafter had gone to the house of the parents of the Appellant. According to DW-1 they had dinner there and had gone to sleep in that house. Thereafter DW-1 stated that around 1 or 2 am, three-four persons came to the house and raised an alarm which woke up both DW-1 and the Appellant. The said persons asked them to come to the house of the Appellant. According to DW-1, "parents of the accused had already left the house." Thereafter DW-1 and the Appellant went to the house of the Appellant and on reaching there "found that a crowd had gathered around the house of the relatives of the accused including his parents were present there." The trial Court, in the impugned judgment, disbelieved DW-1 for various reasons.

22. Mr. Sakesh Kumar, learned counsel for the Appellant, referred to the decision of the Supreme Court in *State of Haryana v. Ram Singh (2002) 2 SCC 426* where it was observed that "the evidence tendered by defence

witnesses cannot always be termed to be a tainted one-the defence witnesses are entitled to equal treatment and equal respect as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses on a par with that of the prosecution.”

23. In the present case, the crucial aspect of who was present in the house of the Appellant on the intervening night of 22nd/23rd June 2010 is spoken to by PW-11 and DW-1. Both of them suggested that the Appellant was in fact, during that time, present and sleeping in the house of his parents, 500 m away from his own house. It must be recalled that according to DW-1 when three or four persons came to wake them up, the parents of the Appellant had already gone ahead to the Appellant’s house. When DW-1 and the Appellant reached there, all the relatives of the accused including his parents were already present.

24. The evidence of both PW-6 and PW-7, however, depicts a contradictory scenario. Both these witnesses, constables with the Delhi Police, have consistently stated that when they reached the spot, they found the Appellant there alone and no one else. In his cross-examination by the counsel for the accused, PW-6 stated “when we reached the spot, only Karamvir was present there.” He further stated that they remained at the spot “hardly for 10 or 12 minutes.” In the meanwhile, the SHO of PS Kapashera accompanied by five to seven policemen who reached there and by that time “several persons from neighbours had also gathered at the spot.” PW-6 specifically denied the suggestion that “when we reached the spot, many persons had already gathered there and that we did not talk to Karamvir.” Likewise, PW-

7 too denied in his cross-examination that “several persons including the in-laws of Karamvir were present at the spot, when we reached there.” ON a careful analysis it appears to the Court that both PW-11 and DW-1 cannot be believed on this aspect. On the other hand, the evidence of PWs 6 and 7 appears to be natural and consistent.

25. The trial Court has analysed the evidence of DW-1 at length. The trial Court has for very cogent reasons held that his version is not trustworthy. There was no reason for PW-6 and PW-7, constables of the Delhi Police, to give any false statement as regards who was present when they reached the spot. Indeed, as already noted, there was no suggestion to either PW-6 or PW-7 by counsel for the accused that the Appellant did not go to call his parents. Both of them have denied that anyone else was already present at the spot when the Appellant went to call his parents. In any event, the case put forth by DW-1 that all the relatives of the accused and the parents of the accused were already present when he and the accused reached the spot is totally belied by the clear and consistent depositions of PW-6 and PW-7. In the considered view of this Court the trial Court rightly disbelieved DW-1.

26. Further, as pointed out by the trial Court, there was no reason why if he was so sure of his defence, the Appellant would not have examined his own parents. For some reason, he has not done so. He instead opted to examine his brother in-law DW-1 who happened to be a co-accused with him in FIR No. 118 to 2010 registered at PS Sarojini Nagar. It is not in dispute that both the Appellant and DW-1 are charged with serious offences under Sections 302/ 365 read with Section 34 IPC in that case. To that extent, the evidence

of DW-1 does get 'tainted'. This taint may not have attached to the parents of the Appellant had he chosen to examine them. They could have come forward to tell the Court whether in fact their son was in their house on the intervening night of 22nd/23rd June, 2010 as claimed by him.

27. It was repeatedly stressed by Mr. Sakesh Kumar that there is no clear evidence that the Appellant was alone with his wife in their house on the intervening night of 22nd/23rd June, 2010. At this stage, it must be noted that the Appellant and his wife had two children, the eldest being a son who admittedly has been growing up with the father of the deceased even prior to her death. Further, admittedly the younger child i.e. daughter of the Appellant and the deceased was in the house but perhaps sleeping. It was submitted by Mr Kumar that the prosecution ought to have examined the younger daughter but for some reason did not choose to do so. Equally, however, it was open to the Appellant to have examined his own daughter as a defence witness but he too did not choose to do so.

28. Mr. Sakesh Kumar referred to the decision in ***Trimukh Maroti Kirkan v. State of Maharashtra (2006) 10 SCC 681*** where the legal requirement as far as Section 106 IEA is concerned was explained by the Supreme Court. It was held that if the "prosecution succeeds in leading evidence to show that shortly before the commission of the crime, the husband and wife were seen together or the offence takes place in dwelling house where the husband also normally resided" and if the accused "does not offer an explanation how the wife received injuries or offers an explanation which is found to be false, it

is a strong circumstance which indicates that he is responsible for the commission of the crime.”

29. Undoubtedly, the initial burden is on the prosecution to show that either shortly before the commission of the crime the husband and wife were seen together, or the offence has taken place in the dwelling home where the husband also normally resides. In the present case, although the prosecution may not have led evidence to show that shortly before the commission of the crime, the Appellant and his wife were seen together, they certainly have been able to prove that the offence has taken place inside the dwelling house where the Appellant normally resides. The explanation offered by the Appellant that he was sleeping at his parents’ house has been disbelieved by the trial Court and in the considered view of this Court, rightly. That explanation has been proved to be false.

30. It is this false plea of the Appellant that has persuaded the trial Court to apply Section 106 IEA and to conclude that it is only the Appellant and no one else who can be held responsible for the murder of his wife. Indeed the Appellant has no explanation as to how and in which manner his wife was killed and by whom.

31. It was then submitted, as an alternative plea as regards the nature of the offence, that this Court should consider whether the offence was as a result of a sudden fight or quarrel between husband and wife in the manner suggested by the Appellant himself in his extra-judicial confession to PW-11.

32. Unfortunately, the Appellant himself did not pursue that alternative line of defence during the trial. With PW-11 resiling from his previous statement to the police, the extra-judicial confession as a piece of circumstantial evidence was unavailable to the prosecution. It is not, therefore, possible to accept the plea of the Appellant at this stage that the offence should be considered to be one that took place as a result of sudden quarrel or fight.

33. This Court is unable to find any legal infirmity either in the impugned judgment or in the order on sentence of the trial Court. The appeal is accordingly dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

JANUARY 10, 2018

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