

\$~3

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

Date of Decision: March 24, 2018

+ **CRL.A. 586/2017**

RIYAZUDDIN Appellant
Through: Mr.Aditya Vikram, Advocate (DHCLSC)

versus

STATE Respondent
Through: Mr.Amit Ahlawat, APP with
Insp.Narender Kumar, PS Hauz Khas

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR
HON'BLE MR. JUSTICE A. K. CHAWLA

JUDGMENT
(ORAL)

SUNIL GAUR, J.

1. Impugned judgment of 1st February, 2017 holds appellant guilty of the offence of murdering his wife by strangulation. Vide impugned order of 15th February, 2017, appellant has been sentenced to imprisonment for life and fine of ₹5,000/- with penalty clause. The facts as noted in the impugned judgment are as under:-

*“It is the case of the prosecution that on 19.10.2014,
DD no. 14A was received by PS Khajuri Khas which*

was assigned to SI Mukesh Chauhan who visited the spot of incident alongwith Ct. Ashok and observed that a dead body of a lady was lying on a bed in a room at first floor of House No. 1070, E-Block, Nehru Vihar, Delhi and a chunni was tied around her neck and froth was coming out of nose. Complainant Md. Wakil, who was the brother of deceased, met there and made a statement that deceased was his sister who got married with the accused and it was second marriage of accused and third of the deceased. It is further stated that accused Riyazuddin was habitual drunker and used to harass the deceased for demanding money and also sold out her jewellery items worth of Rs. 60-70 thousand. It is further stated that accused was not a man of virtue but still they were bearing with him as it was third marriage of his sister. It is further stated that one house measuring 50 Sq. Yards bearing H. No. H/171, Gali No 25, Old Mustafabad, Delhi belonging to his father was sold out for Rs. 50 Lakhs and as per family settlement, sale proceeds were distributed in 5 shares including the share of deceased for Rs. 10 Lakhs and accused accused had been harassing her for this share money for the last 2-2 1/2 months and deceased used to inform him about it. It is further stated that on 19/10/2014, at about 5:00 a.m., he went to offer Namaz in Chand Masjid and saw that accused came out of his house and left towards 25 foots road hurriedly thereby ignoring him, whereas they had decided one day earlier to go for Jamat on that day from Aiyasha Masjid to Khekra. After some time, landlord of accused informed him that accused had killed his sister. He instantly reached there and saw that his sister was lying in room and a chunni was tied around her neck and her tongue was coming out of her teeth. SI prepared a rukka on the basis of this

statement and handed over to Ct. Ashok to get registered FIR. Crime team was also informed and visited the spot. After FIR investigation was assigned to IO Insp. Om Prakash. IO got removed the articles of the deceased through L/Ct. Ritu and seized the same. Chunni was also seized and dead body was sent for postmortem. Postmortem was conducted on the dead body in GTB Hospital and released to family members. The seizures were sent to FSL. Accused was arrested by the special staff members of Rohini and intimation was sent to the concerned PS. Accused was arrested on production before the concerned court and charge sheeted in this case u/s 302 IPC.”

2. To prove its case, prosecution has relied upon evidence of 33 witnesses, out of whom the material evidence to which our attention has been drawn is of Arif (PW-4) and Nasim (PW-8), the witness of last seen, Mohd.Wakil (PW-23), brother of deceased regarding the motive, the postmortem report (Ex.PW-15/I), the viscera report (Ex.PW-32/E2), the medical evidence and the evidence of Investigating Officer Om Prakash (PW-32). Appellant in his statement under Section 313 of Cr.P.C. had stated that he has been falsely implicated in this case and that he was not present with his wife on the night intervening 18th and 19th October, 2014 as he had gone to Azad Pur Sabzi Mandi in the evening of 18th October, 2014 where he had stayed overnight and as there was a jagran in Sabzi Mandi and in that jagran, Yogesh, Mukesh and Allauddin were present with him and he had remained in Sabzi Mandi till 8:00 AM on the next day. Appellant had chosen not to lead any evidence in his defence. Trial

Court has relied on prosecution evidence, discarded appellant's version and thus convicted and sentenced the appellant as noted hereinabove.

3. Learned counsel for appellant assails the impugned conviction on the ground that the prosecution version is not reliable. It is submitted that as per evidence of *Nasim (PW-8)* whenever appellant was not in his house, younger brother and deceased used to remain with the deceased in her room and there is no credible evidence regarding presence of appellant at the spot on the day and time of the incident. It is pointed that *Arif (PW-4)* and *Imrana (PW-6)* before whom appellant had purportedly confessed the commission of the crime have not supported the prosecution case. Regarding *Mehboob (PW-10)*, it is submitted that this witness has also not supported the prosecution case of appellant coming out of his house at 5:00 AM on the next day of the incident i.e. 19th October, 2014. It is next submitted that *Nasim (PW-8)* has deposed that appellant used to go to Azad Pur Market for his work and used to return on the following morning. So, it is submitted that on the night intervening this incident, appellant was not at his house which falsifies the prosecution version of appellant murdering his wife on the night intervening 18th and 19th October, 2014.

4. As regard the evidence of *Mohd.Wakil (PW-23)* is concerned, learned counsel for appellant submits that the alleged motive for this incident is of deceased not getting her share of 2.5 lacs out of the sale proceeds of the house sold by her family and the evidence of this witness (*PW-23*) of having seen appellant coming out of his residence at 5:00 AM

on 19th October, 2014 stands falsified from his cross-examination wherein this witness has stated that there was a *Masjid* near his house but this witness had chosen to go to the *Masjid* which was near the house of appellant which casts a serious doubt about the veracity of evidence of this witness. It is pointed out that Fazar Ki Namaj could be offered at the *Masjid* near the house of this witness and also at the Chand *Masjid* which was near the house of the appellant and so, there was no occasion for this witness to have gone to the Chand *Masjid* to offer Fazar Ki Namaj as it could have been offered by this witness at the *Masjid* near his house. It is also pointed out that it has come in the cross-examination of this witness (PW-23) that appellant was not in his house on 18th and 19th October, 2014 as appellant had left his house at 8:00 PM for Sabzi Mandi.

5. According to appellant's counsel, the above said version entirely demolishes the prosecution case and renders it unworthy of reliance. It is pointed out that as per deposition of *Smt. Vakila* (PW-29), the share of deceased in the sale proceeds of ancestral house was ₹2 lacs and it stands negated by the evidence of *Mumtaz* (PW-30) sister-in-law of the deceased. It is further pointed out by appellant's counsel that *Smt. Anwari* (PW-33), mother-in-law of appellant in her evidence has asserted that the share of deceased in the sale proceeds of ancestral house was of ₹1,75,000/- approximately. It is the submission of appellant's counsel that the contradiction regarding the share of deceased in the sale proceeds of ancestral house demolishes the prosecution case. It is also submitted that the family members of the deceased had the motive to eliminate her

and not the appellant. Thus, it is submitted that prosecution version is unreliable and so, the impugned conviction and sentence ought to be set aside and appellant be acquitted. On the other hand, learned Additional Public Prosecutor submits that the prosecution case stands duly proved from the evidence on record and so this appeal deserves dismissal.

6. After having heard learned counsel for the parties and on scrutiny of evidence on record, we find that the prosecution case is of appellant strangulating his wife with a chunni at his house on the night intervening 18th and 19th October, 2014. Although, it is the version of appellant's neighbor *Nasim (PW-8)* that appellant used to go to Azad Pur Market for his work and used to return on the following morning but this witness (PW-8) in his evidence has categorically asserted that after this incident i.e. on 19th October, 2014, at about 5:00 AM he was going to bathroom when he had seen appellant coming out of his room and was going outside his house. The evidence of last seen remains unshaken in cross-examination of this witness *Nasim (PW-8)*. Since the evidence of *Nasim (PW-8)*, of having seen the appellant coming out of his house soon after the incident is cogent, therefore, no reliance can be placed upon the evidence of *Imrana (PW-6)* who has deposed that appellant used to leave for his work in the evening and used to come back in the morning hours. Pertinently, it has come in the evidence of *Nasim (PW-8)* that on Sunday, appellant used to be at home as it was a holiday. The next day following this incident i.e. 19th October, 2014 was a Sunday. Therefore, we find no hesitation in discarding appellant's plea of alibi of not being present in his

house in the night intervening 18th and 19th October, 2014. The stand of deceased's younger brother being with the deceased, whenever appellant used to go out, lacks credence and thus cannot demolish the prosecution case in the face of evidence of *Nasim (PW-8)* regarding appellant been last seen outside his house soon after the incident. Even if the evidence of *Arif (PW-4)* and *Imrana (PW-6)* and *Mehboob (PW-10)* is discarded, but still from the reliable evidence of *Nasim (PW-8)*, the substratum of the prosecution case stands firmly established.

7. The discrepancy pointed out by learned counsel for appellant regarding the quantum of share of the deceased in the sale proceeds of the house sold by her family, is of no consequence as it really does not matter whether the share of the proceeds of the house sold were ₹1,75,000/-, ₹2,00,000/- or ₹2,50,000/-. Nothing turns on this.

8. Otherwise also, the concerned witnesses have not been confronted with the aforesaid immaterial discrepancy of the quantum of deceased's share in the sale proceeds of the house sold by family of deceased. Since appellant's wife had died unnatural death in appellant's house and the factum of appellant being present in the house on the night intervening this incident stands firmly established, therefore, it was incumbent upon appellant to explain as to how his wife had died unnatural death in his house. Though appellant had sought to lead evidence but had not led any evidence and no plausible version of this incident has been put in cross-examination of prosecution witnesses. There was a strong motive for appellant to have eliminated his wife. The evidence of motive is in the

shape of deposition of *Smt.Vakila (PW-29)* who has categorically stated that appellant used to harass the deceased and had even threatened to kill her if deceased did not bring her share out of the sale proceeds of the house sold by her family. It has also come in the evidence of this material witness (*PW-29*) that the appellant used to spend his earnings in consuming liquor. The evidence of *Wakila (PW-29)* regarding the motive stands amply corroborated by the evidence of *Modh.Wakil (PW-23)* on the motive aspect as he has categorically stated in his evidence that appellant used to demand the share of deceased out of the sale proceeds of the house sold by her family and if the said money was not brought by her, then he would kill her.

9. Relevantly, the evidence of this witness (*PW-23*) also incriminates appellant as he was last seen outside his house after the incident by this witness. A futile attempt was made by learned counsel for appellant to dislodge the evidence of this witness (*PW-23*) by pointing out that there was no occasion for him to go to a *Masjid* to offer the prayer which was near the house of appellant, as he could have offered the prayer in the early morning of 19th October, 2014 at the *Masjid* near his house. To say the least, on this aspect, witness *Mohd.Wakil* ought to have been cross-examined but since there is no cross-examination on the vital aspect as to why this witness did not offer prayer at the *Masjid* near his house and went to offer the prayer near the *Masjid* which was near the house of appellant, therefore, on this account the evidence of this witness cannot be discarded. In the face of the evidence of *Smt.Vakila (PW-29)* coupled

with the evidence of *Nasim (PW-8)*, we have no hesitation in concluding that it was appellant alone who had murdered his wife and it was none else. The ocular evidence as discussed above finds ample corroboration from the medical evidence on record.

In light of the aforesaid, we hold that the prosecution case stands proved beyond reasonable doubt and impugned conviction and sentence awarded to appellant is well-deserved. Thus, finding no substance in this appeal, it is dismissed.

(SUNIL GAUR)
JUDGE

(A.K. CHAWLA)
JUDGE

MARCH 24, 2018
mamta