

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

Date of Decision: January 27, 2018

+ **CRL. A. 895/2015**

VASUDEV

..... Appellant

Through: Mr. Aman Chaudhary, Advocate

Versus

STATE

..... Respondent

Through: Mr. Hirein Sharma, Additional
Public Prosecutor with SI Gaurav

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

JUDGMENT
(ORAL)

1. Appellant has been tried for committing murder of his wife on 28th August, 2012 at the house and vide impugned judgment of 7th April, 2015, he has been convicted for the offence under Section 302 of IPC and vide impugned order of 9th April, 2015, he has been sentenced to imprisonment for life and fine with default clause.

2. As per the prosecution case, on 28th August, 2012 at about 09:45 A.M., police had reached appellant's house and had found that a girl child aged 3 years was sleeping in the front room and in the inner room, appellant was sitting besides the dead body of his wife. The concerned

SDM (PW-5) had made enquiries from appellant, who had disclosed that on the night intervening 27/28th August, 2012, he had a quarrel with his wife regarding sale of his vehicle and his wife was favouring the said purchaser, therefore, he strangled his wife with a *Chunni/Dupatta*. The entire prosecution version stands noted in the opening paragraphs of impugned judgment and so needs no reproduction. Apart from evidence of the SDM (PW-5), there is medical evidence and evidence of the Investigating Officer (PW-24) on record. The crux of the prosecution case is tabulated in paragraph No.31 of impugned judgment. The appellant had chosen not to lead any evidence in defence and trial court while relying upon prosecution evidence has convicted appellant for the offence in question, as noted hereinabove. The stand of appellant before trial court, as noted in paragraph No.33 of impugned judgment, is as under:-

“The accused Vasudev pleaded innocence and claimed false implication. He stated that he had no discussion with Pankaj Gupta. He never met Pankaj Gupta personally. He stated that on 23/24.08.2012, his wife visited Pankaj Gupta alongwith a lady. His wife asked him not to visit Pankaj Gupta as he could misbehave with him. He denied that he demanded any amount from his father-in-law Sh. Davender Tiwari. He stated that he incurred expenses of the clothes and given jewellery in the marriage of his elder sister-in-law. He stated that his relation with his wife was cordial. There was no dispute between him and his wife. He stated that he was not using the mobile no.8010655648 and the said number was being used by his wife. He denied

making of call to the police.”

3. Learned counsel for appellant at the outset submits that appellant had committed the offence in question without there being any premeditation and had no intention to murder his wife. It is submitted on behalf of appellant that out of anger and frustration, the offence in question has been committed. It is also submitted that appellant has a minor child to support and so, the offence committed by appellant falls under Section 304 Part-II of IPC and not under Section 302 of IPC. It is pointed out by appellant's counsel that as per Nominal Roll of appellant, he has undergone sentence of more than six years and during his incarceration in jail, he has been doing work of *Yoga Sahayak* and meditation and so, in the facts and circumstances of this case, the sentence awarded to appellant deserves to be reduced to the period already undergone by him.

4. On the contrary, learned Additional Public Prosecutor for respondent-State submits that appellant had strangled his wife and so, his intention to murder his wife is clear and that appellant has been rightly convicted and sentenced for the offence in question and so, this appeal deserves to be dismissed.

5. Upon hearing and on perusal of impugned judgment, order on sentence and the evidence on record, we find that appellant had made an extra judicial confession before the SDM (PW-5) of having strangled his wife with a *Chunni/Dupatta* on account of some quarrel with her. We find that evidence of SDM (PW-5) is unassailable as nothing has come out in the brief cross-examination of SDM (PW-5). The aforesaid

evidence receives ample corroboration from medical and other evidence on record. Appellant's counsel has rightly confined this appeal to the nature of offence committed. It is evident from evidence of *Pankaj Gupta (PW-19)* that deceased had offered to sell Maruti EECO Cargo Van for rupees one lac and he had paid rupees fifty thousand and remaining fifty thousand was to be paid after completion of documentary formalities as the said vehicle was registered in the name of appellant. The precise submission put forth by appellant's counsel is that selling of aforesaid vehicle by deceased had infuriated appellant, who, in a fit of anger, had strangled his wife with a *Chunni/Dupatta*. After having gone through the evidence of *Dr. Meghali Kelkar (PW-6)*, we find that the extent of strangulation was such that blood came out of the nostril of deceased. We are unable to accept the plea that appellant had committed the offence in question in a sudden fit of anger, as it has come in the evidence of *Pankaj Gupta (PW-19)* that aforesaid vehicle, which was sold to him by deceased, remained in use with him for three/four months. So, it cannot be said that the incident in question took place in fit of anger. The medical evidence reveals that ligature mark was present around the neck of deceased. Thus, we find that the culpable homicide in the instant case is of '*First Degree*' which brings the offence in question within the ambit of Section 300 of IPC. The act of strangulating deceased can neither be said to be accidental nor unintentional.

6. In a case of strangulation of deceased, Division Bench of this Court in *Karamveer v. State (Govt. of NCT of Delhi)*, 2018 SCC OnLine Del 6483 has maintained the conviction of accused for the offence of murder. In our considered opinion, the nature of offence committed by appellant is

cold blooded murder and no case for altering the conviction of appellant from Section 302 of IPC to Section 304 of IPC is made out. In light of aforesaid, finding no substance in this appeal, it is dismissed.

(SUNIL GAUR)
JUDGE

(PRATHIBA M. SINGH)
JUDGE

JANUARY 27, 2018

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