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

+ **CRL.A. No. 839/2017**

BHUPINDER DUTT JOSHI Appellant
Through: Ms. Aishwarya Rao, Advocate.

versus

STATE Respondent
Through: Mr. Kewal Singh Ahuja, APP

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

JUDGMENT
01.08.2018

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Dr. S. Muralidhar,J.:

1. This appeal is directed against the judgment dated 30th May 2017 passed by the learned Additional Sessions Judge (ASJ), North District, Rohini Courts, Delhi in Sessions Case No.57549/2016 arising out of FIR No.50/2015 registered at Police Station ('PS') Swaroop Nagar holding the Appellant guilty of the offence punishable under Section 302 Indian Penal Code ('IPC'). The appeal is also directed against the order on sentence dated 1st July 2017 whereby the Appellant was sentenced to rigorous imprisonment for life with a fine of Rs.10,000/-, and in default of payment to undergo simple imprisonment (SI) for one year. The charge against the accused was that on 26th January 2015 at around 10 am on the first floor of D-601, Nathu Pura Gaon, Delhi, he murdered his wife Komal (the deceased).

2. The case of the prosecution was that the Appellant was married to the

deceased and four children were born to them out of this wedlock. They had come to Delhi from a village in Chhattishgarh in 2002. The Appellant owned a house in Samridhi Colony. On 18th January 2015, the Appellant, the deceased and their children had shifted to a room on the first floor of the house belonging to Devender Singh @ Raju Tomar (PW-4) on the pretext that the house at Samridhi Colony was under renovation.

3. A week after they had moved to the new accommodation, on 26th January 2015, the Resident Welfare Association of Samridhi Colony organized a programme to celebrate the occasion of Republic Day. PW-4 was the landlord of this new accommodation. Yogender Kumar (PW-2) deposed that the Appellant along with his children attended the said Republic Day programme, as his children were participating in the function. The Appellant attended the function in the morning but left for his house thereafter leaving his children behind at the function. The children who accompanied him were Ms. Aakansha (PW-21) and her two younger sisters. Master Tushar (PW-20) is the son of the Appellant.

4. While PW-20 stayed back at home to play with his friend Anni, the daughters accompanied their father, the Appellant, to attend the Republic Day function. After a short while, the Appellant left the function for home. Master Tushar (PW-20) deposed that at 10 am he had gone to the house of his friend Anni, returned at 11 am and then again left at 11:05 am to play with Anni at his house. PW-20 returned home at 12 noon. The deceased had given him money for food and PW-20 returned home with a snack and ate it there. The Appellant had also given PW-20 money in the morning after

saying that he was going to the Samridhi Colony with the two daughters and the deceased.

5. When PW-20 had returned home with a snack, he had seen a quilt on the sofa but had not checked the same. After having eaten, PW-20 had again left the house for playing. When he returned home in the afternoon, he found a number of people gathered at the ground floor whereas his two sisters were on the roof. When PW-20 reached the roof, PW-21, that is, his sister Aakansha told him “*mummy ke muh se jhaag aa raha hai*”. PW-20 stated that when he had tried to enter the house after this, the landlord had stopped him and told him that the police was coming. PW-20 added that he had accompanied his maternal uncle, who had reached the spot in the meanwhile, to the hospital where his mother was taken. At the hospital PW-20 was informed that the deceased had died.

6. According to PW-20:

“My parents used to quarrel as my father suspected that my mother is having illicit relations. I told this fact to the police in my statement.”

7. As far as PW-21 is concerned, she confirmed that at around 8/8:30 am she along with her younger sister accompanied the Appellant to the Republic Day function at Samridhi Colony. She then stated as under:-

“Our papa left us at the function and went home to bring mother. Papa did not return to the function and went home to bring mother. Papa did not return to the function. At about 1/1:30 pm after the function was over I along with my younger sisters returned home. When we returned home I found my mother lying on sofa covered with quilt. I found mummy ke

muh se jhaag aa raha tha.”

8. PW-21's youngest sister informed the landlord. There was no sign of the Appellant. The landlord, that is, PW-4 then made a call to the police who took the deceased to the hospital. PW-4 later informed the children that their mother had died. According to PW-21, the Appellant only returned home after 1 ½ weeks along with the police. In her cross-examination, PW-21 stated *inter alia* that she had seen the Appellant going home on a bike after dropping the children at the Republic Day function.

9. Yogender Kumar (PW-2) spoke about the function organized by the residents at Samridhi Colony. He spoke about the Appellant attending the function in the morning hours and then leaving for his house. According to PW-2, he received a call on his mobile from the accused around 1/1.15 pm and the accused asked him to send back his children home. PW-2 replied that his children were participating in the function. When he went away from the noise of the loudspeakers at the function and called back the number from which he had received the call, the Appellant informed him that he had killed his wife.

10. Although PW-2 claims that the Appellant made an extra judicial confession to him about having killed the deceased, in the cross-examination of PW-2 it appears that he did not disclose this fact to the police at the first instance when his statement was recorded under Section 161 of the Criminal Procedure Code (Cr PC). At this stage, it is important to note that the call detail records (CDRs) for the phones used by both the Appellant and PW-2 confirmed that a call was indeed made by the Appellant to PW-2 at around

1:25 pm and PW-2 in turn had called back the Appellant. Even if the incriminating part of the evidence with regard to the Appellant having confessed to PW-2 about the crime is discarded as it was not stated earlier by him to the police, the fact remains that the Appellant was no longer at the said Republic Day function and in all probability did call PW-2 asking him to send the children back home.

11. When the depositions of PWs 20 and 21 are read collectively, it becomes plain that after accompanying his daughters to the Republic Day function, the Appellant returned home. From the evidence of PW-20, it is clear that the deceased was present at home in the forenoon. Further with PW-20 having gone away between 10 and 11 am, it was only the Appellant who was with the deceased in the house at the relevant time.

12. The death of the deceased has been proved to be homicidal by the medical evidence. The post mortem conducted by Dr. Jatin Bodwal (PW-17) noticed ligature strangulation via injury No.1 which was sufficient to cause death in the ordinary course of nature. The strangulation was by a ligature material. In this case, it was supposed to be a thread of 167 cm and shoe lace having length of 130.5 cm. This ligature material was shown to PW-17 who confirmed that injury No.1 could have been caused by the said ligature material. There was no cross-examination of PW-17. With the prosecution having proved that the deceased died a homicidal death and with the evidence of PWs 20 and 21 read with evidence of PW-2 confirming the presence of the Appellant in the house with the deceased to the exclusion of everyone else, Section 106 of the Indian Evidence Act, 1872 stood attracted.

The accused was legally obliged to give an explanation for the homicidal death of the deceased while he was in her company in the house to the exclusion of everybody else.

13. The accused has not made the slightest attempt to offer any explanation. He has not led any evidence to show where he might have been in the morning of 26th January 2015 if not at his house. The Appellant has not been able to disprove the evidence about his being arrested in his village more than a week after the incident. The fact that he was not found at the cremation of his wife is a telling circumstance which adds to the chain of circumstances pointing to his guilt.

14. PW-4 who is the landlord provided another important link concerning the motive. In barely one week when the Appellant, the deceased and their children had moved to the room on the first floor of the building where PW-4 had a shop and before the death of the deceased, PW-4 noticed that the couple had frequent quarrels with the Appellant doubting that the deceased was having illicit relations with someone. This was also spoken to by PW-20. Therefore, the motive for the crime also stood established.

15. It was urged by Ms. Aishwarya Rao, the learned counsel appearing for the Appellant, that as far as PW-20 is concerned, the learned APP in the trial Court, on the pretext of cross-examining the said witness on the ground that he had resiled from his earlier statement, elicited confirmative answers to close ended questions, a practice disapproved by the Supreme Court in *Varkey Joseph vs. State of Kerala 1993 Supp (3) SCC 745*. While Ms. Rao

may be justified in the above criticism, the Court finds that even if the portion of the deposition of PW-20 pursuant to such cross-examination by the APP is kept aside, there is sufficient evidence on the record to show that it was the Appellant who was last seen with the deceased; who was present in the house with her to the exclusion of everyone else at the time of the crime and that the motive was his suspicion that the deceased was having illicit relations with someone. The prosecution has also been able to show that the Appellant was absconding after the crime. In the considered view of the Court, therefore, the decision in *Varkey Joseph (supra)* does not in any way affect the case of the prosecution.

16. The circumstances proved by the prosecution formed a complete chain and point unerringly to the guilt of the Appellant and the Appellant alone. Consequently, the Court finds no legal infirmity in the impugned judgment of the trial Court and the consequent order on sentence. 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.

AUGUST 01, 2018
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