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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A. 1057/2017 & CRL.M.(BAIL)2048/2017

Reserved on: March 12, 2018

Date of decision: March 22, 2018

USHA RANI

..... Appellant

Through: Mr. Joginder Tuli with Ms. Joshini Tuli, Mr. Ashu Kumar Sharma and Ms. Divya Jangid, Advocates.
Ms. Aishwarya Rao, Advocate.

versus

STATE

..... Respondent

Through: Mr. Amit Chadha, APP for State with Insp. Tribhuvan Negi PS N.D.R.S. and Insp. Bala Shankaran, PS Kashmere Gate.

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CRL.A. 1058/2017 & CRL.M.(BAIL)2049/2017

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..... Appellant

Through: Mr. Joginder Tuli with Ms. Joshini Tuli, Mr. Ashu Kumar Sharma and Ms. Divya Jangid, Advocates.
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versus

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Through: Mr. Amit Chadha, APP for State with Insp. Tribhuvan Negi PS N.D.R.S. and Insp. Bala Shankaran, PS Kashmere Gate.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE I.S. MEHTA**

J U D G M E N T

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Dr. S. Muralidhar, J.:

1. These two appeals have been filed by the same Appellant, Usha Rani. Criminal Appeal No. 1057 of 2017 is directed against the impugned judgment dated 30th March 2013 passed by the learned Additional Sessions Judge (ASJ), West District, Tis Hazari Courts, Delhi in Sessions Case No.25/10/08 arising out of FIR No.147/2004 registered at Police Station ('PS') New Delhi Railway Station ('NDRS') convicting the Appellant (who was Accused No. 2: A-2) for the offence punishable under Section 302/34 Indian Penal Code ('IPC') and 201/34 IPC for committing the murder of two children, both brothers, Chillu and Ashu, and also dumping their dead bodies. The appeal is also against the order on sentence dated 28th May 2013 whereby for the offence punishable under Section 302/34 IPC, she was sentenced to undergo imprisonment for life with the further direction that the convict should not be released from the prison for the rest of her life and with a fine of Rs. 20,000; and for the offence under Section 201/34 IPC, with rigorous imprisonment for five years with fine of Rs.5,000 and in default, to undergo RI for three months.

2. Criminal Appeal No. 1058 of 2017 is directed against the impugned judgment dated 30th March 2013 passed by the same learned ASJ in Sessions Case No.33/10/2008 arising out of FIR No.234/2004 registered at PS Kashmere Gate convicting the Appellant for the offences punishable under Section 364/34, 302/34 and 201/34 IPC for committing the murder of

Waziro Bai (mother of Chillu and Ashu) and thereafter dumping the dead body in order to conceal the murder. The appeal is also directed against the order on sentence dated 28th May 2013 whereby the Appellant was sentenced to undergo imprisonment for life with the further direction that the convict should not be released from the prison for the rest of her life along with fine of Rs. 20,000 for the offence under Section 302/34 IPC; RI for ten years along with fine of Rs. 8,000 and, in default, to undergo RI for five months for the offence under Section 364/34 IPC; and to undergo RI for five years with fine of Rs. 5,000 and, in default, to undergo RI for three months for the offence under Section 201/34 IPC.

Background

3. The background to the present case is that at the instance of PW-22, the daughter of the deceased Waziro, FIR No.550/2004 was registered at PS Pahar Ganj in which both the present Appellant and the co-accused Kanhaiya Lal Seth (A-1) were named as accused. This was a case under Section 376 IPC. In the trial arising out of the said FIR, both the present Appellant and A-1 (Kanhaiya Lal Seth) were convicted by the Court and sentenced on 23rd October 2007 and 24th October 2007 respectively. As noted by the learned trial Court in its impugned judgment in the present case, the appeal filed against the said order of conviction and sentence was withdrawn and therefore, the conviction of the Appellant and A-1 in the said case attained finality.

4. It appears that while he was lodged in Central Jail, Tihar as a result of the above conviction, A-1 filed an application in January 2007 under the RTI

Act 2005 enquiring about a dead body found in the area of Kashmere Gate and on the forearm of which 'Waziro' was tattooed. Inspector Randhir Singh (PW-44) related the said application under the RTI Act with FIR No.234/2004 registered at PS Kashmere Gate regarding Waziro and her two sons (brothers of PW-22) having gone missing. PW-44 then traced PW-22 and got identified the dead bodies through photographs and connected the two accused, i.e. the present Appellant and A-1, to the present cases with the help of crime dossier and finger prints. Thus, a breakthrough was achieved in the present cases which, up until then, were being treated as blind murders.

FIR 147 of 2004

5. On 19th April 2004, at around 10.30 am, Inspector Netra Pal (PW-43) an Additional SHO, PS NDRS along with Sub Inspector (SI) Brijesh Malik (PW-45) were doing routine check at the NDRS. When they reached the mini passenger hall they found that the public had gathered near the central bridge escalator. Head Constable (HC) Jitender (PW-30) was present in the passenger hall and informed them about a carton lying near the stairs of the escalator on which some letters/figures were written. Foul smell was emanating from the said carton. PW-43 partially opened the carton and found a dead body. The senior officers were informed and the finger print expert as well as crime team were called.

6. SI Hira Lal (PW-28), Crime Team In-charge, and SI N.K. Sharma (PW-21), Finger Print Bureau ('FPB'), opened the carton. They found that it contained one mat, some clothes, one dirty pillow, tailoring clothes and grey

colour polythene bag in which two dead bodies of male children aged seven to eight and nine to ten years were found. Both of them had red coloured marks around their necks and their tongue and eyes were out. PW-21 noticed chance prints on the tape on the carton. The crime team photographer took photographs of the dead bodies and the spot. The *rukka* was sent through Ct. Ravinder Malik (PW-36) for registration of the FIR. Site plan was prepared, and the carton and the articles recovered therefrom were seized.

7. The post-mortem of both dead bodies confirmed that the cause was due to asphyxia consequent to manual strangulation. Despite the best efforts being made, both children could not be identified. They were cremated on 27th April 2004 as unclaimed.

8. Sanjay (PW-25), who used to work at the escalator, and Shiv Ram Meena (PW-31), who was a coolie, stated that on 18th April 2004, one male and one female had left the carton at the spot and they could identify those persons if they were shown to them. On 1st June 2005, since no progress was made in the investigation, the case was closed as untraced. This was as far as FIR No.147/2004 registered at PS NDRS.

FIR 234 of 2004

9. Now coming to FIR No.234/2004 registered at PS Kashmere Gate, the background is that on 13th May 2004, a telephonic call was received at PS Kashmere Gate from Puran Chand Rathore (PW-2) working in Telegraph Officer near GPO, Kashmere Gate at 8.35 am that an iron box (unclaimed) was lying at the gate of the Telegraph Office. On receipt of the said call, SI Ved Prakash (PW-35) along with Ct. Dungar Singh (now HC) (PW-15) as

well as Inspector Sushil Kumar Tyagi (PW-46), Additional Station House Office, PS Kashmere Gate and other officers also reached at the spot.

10. The iron box was lying on the right side of the main gate of Telegraph Office and was found locked. A foul smell was emanating from it. The box was opened by removing the hinge of the box. Dead body of a female was recovered. Dead body was taken out from the box. The female was about 45 years old and wearing orange colour printed *kameez* and orange colour plain salwar. A green colour *chunni* was lying near her head. On the left arm, the name Waziro was tattooed. On her right arm, a picture of a peacock was tattooed. She was wearing two ear rings of yellow metal, *kaddas* of yellow metal in her both arms and two *chutki* each on a toe of either foot. Body was in a decomposed state. Injury marks were visible on her face and ligature was found around her neck. The ligature had embedded in the skin around the neck. Blood/liquid was oozing out of her mouth and the blood was lying inside the box also. The *rukka* was prepared by PW-46 and sent through PW-15 for registration of the case at 10.15 am on 13th May 2004. FIR was registered under Section 302/201 IPC. The post-mortem confirmed that the death is due to asphyxia consequent to ligature constriction of neck. This was conducted on 19th May 2004. The time since death was determined as one week. After the post-mortem examination, the dead body was cremated as unclaimed.

11. The FSL gave a positive result for the blood tests as far as the blood samples were concerned, and the rest of the exhibits were found inconclusive for group test although some of them contained human blood.

In the toxicology report the viscera was found negative for common poisons.

12. Despite the photographs of the deceased being published in the newspapers, she could not be identified. Therefore, the case was closed as untraced on 15th May 2006.

13. As already noticed, as a result of the RTI application filed by A-1, the investigation of the case was reopened. A-1 claimed that he had been falsely implicated in the rape case. He wanted a copy of the photograph of the dead body and the FIR concerning the 45 years old woman for submitting his defence in the trial of the rape case. That is what led Inspector Randhir Singh (PW-44) to meet PW-22, who was settled in District Karnal, Haryana after marriage.

Investigation

14. On 1st February 2007, she came to PS Kashmere Gate with her relatives. She first indentified dead body as that of Waziro. The parental aunt (Bua) of PW-22 namely, Kanta (PW-14) also correctly identified the dead body as being that of Waziro. When PW-22 was examined, she narrated that after the *holi* festival of 2004, she along with Waziro and her two younger brothers had gone to visit Bangla Sahib Gurudwara at New Delhi. A-1 and his wife, the present Appellant (A-2), met them at the Gurudwara. A-1 promised to provide government job to Waziro and they gave their address and noted their address. After a few days, both A-1 and the Appellant came to the house of PW-22. A letter was written by A-1 and the thumb impression of Waziro was taken thereon. After a few days, Appellant and

A-1 came to their house and took all of them, i.e. PW-22 and her two younger brothers and Waziro, with them in a car driven by A-1 on the promise of providing a government job to Waziro. It is stated by PW-22 that A-1 took all of them to his flat at Motia Khan, Paharganj, Delhi. The Appellant offered tea to all of them.

15. According to PW-22, after taking the tea, she became unconscious. When she gained consciousness, she found herself having been sexually assaulted and her salwar was blood stained. Waziro was unconscious and her two younger brothers were found missing from the flat. According to PW-22, Waziro remained in a drowsy state for a few days and she was kept in a separate room. According to PW-22, after a few days, she found her mother, Waziro also missing from the flat. PW-22 was confined, threatened and subjected to repeated sexual assault by A-1 and his known persons. She claims to have been taken out by A-1 and the Appellant on two-wheeler scooter and she was offered for prostitution by them.

16. A few months thereafter, A-1 was arrested in a cheating case by the police and PW-22 managed to escape from the clutches of the Appellant and A-1. When she first went to their rented house where she and her family were staying at Mauz Pur, she found the house was locked and that her mother and brothers had not returned. Thereafter, she went to her paternal aunt (PW-14) and narrated the entire incident to her. PW-14 then took her to the PS Pahar Ganj and a rape case in FIR No. 550 of 2004 was registered.

17. On 14th May 2008 the investigation of FIR No. 234 of 2004 registered at PS Kashmere Gate was handed over to Inspector Randhir Singh (PW-44).

He found that there was sufficient evidence to arrest both the accused. On 22nd May 2008, PW-44 moved an application in the concerned court for issuance of production warrants against both the accused who were lodged at that time in Central Jail. Both of them then appeared in the Court on 26th May 2008 and were interrogated and arrested with the permission of the Court. Two days' police custody remand was also taken.

18. During the investigation in FIR No.147/2004, both the Appellant and A-1 purportedly confessed on 8th June 2008 that after murdering the two children, their dead bodies were stuffed into a carton and dumped at the NDRS.

19. From the letters recovered from the flat of A-1, the police were able to compare the handwriting with the handwriting in the RTI application. A-1 admitted in some of the letters that the Appellant herein was his wife. The police discovered that A-1 had a large number of criminal cases pending. Neither he nor the Appellant agreed to participate in the TIP.

The trial

20. On 25th February 2009, the ASJ passed an order stating that Sessions Case No. 25/10 (arising out of FIR No. 147 of 2004 registered at PS NDRS) and Sessions Case No. 33/10 (arising out of FIR No. 234 of 2004 registered at PS Kashmere Gate) are overlapping and material witnesses are common and therefore, a joint trial was ordered. FIR No. 234 of 2004 registered at PS Kashmere Gate was treated as the main case.

21. On 26th October 2010, the SHO of the PS NDRS appeared before the

trial Court and stated that the case property could not be traced. On 15th February 2011, after a detailed enquiry, Inspector Suran Bhan, SHO, PS NDRS informed the trial Court that the carton box is not traceable. Even the iron box was stated to be untraced. In each of the trials, 46 witnesses were examined by the prosecution. There were some common witnesses in both the cases.

22. In their statements under Section 313 Cr PC, A-1 states that the Appellant is not his wife at all and that she used to work as a maid in his house. On the part of the Appellant, she states that she has been falsely implicated in this case and she was not married to A-1. She began to work in the house of A-1 since 2002. Neither of the accused preferred to lead any evidence.

23. The trial Court in the impugned judgments held that the deaths were homicidal. As far as the evidence of 'last seen', the narration of PW-22 was held to be reliable, consistent, truthful and therefore, trustworthy. The description of the car in which PW-22, the deceased and her two younger brothers were taken matched the registration certificate of the vehicle in the name of A-1. The trial Court traced the motive as sexual exploitation of PW-22 by the accused persons who were worried about her mother and brothers spilling the beans and therefore, decided to eliminate them. PW-31 (coolie) was able to correctly identify the accused as the persons who kept the carton outside the mini passenger hall. The finger prints recovered from the carton matched that of A-1. Non-production of the case property was said to be not fatal to the case of the prosecution. It was held that the chain

of circumstances in each of the cases had been completely proved.

24. This Court has heard the submissions of Mr. Joginder Tuli, learned counsel for the Appellant and Mr. Amit Chadha, learned APP for the State.

25. At the outset, it requires to be noticed that the fate of the appeal by A-1, if any is not known. The present two appeals are only by A-2, Usha Rani and therefore, the Court is concerned only with the question of her culpability for the offences in question.

Role of Appellant in the crimes

26. As far as the death of Waziro is concerned, the dead body was found in an iron box nearly a month after the discovery of the dead bodies of children. While they were placed in a carton, her dead body was placed inside an iron trunk. While their dead bodies were placed outside the mini passenger hall near the escalator of NDRS, the dead body of Waziro was found in an iron trunk near the GPO in a different location.

27. There is evidence to connect the Appellant to the murder of the two children inasmuch as PW-31 had clearly seen her presence with the carton outside the mini passenger hall along with A-1. However, there is no evidence at all to connect the Appellant with the murder of Waziro whose dead body was found nearly a month later in an iron trunk outside the GPO. There was no chance print of the iron box and there was no witness to explain how the iron box with the dead body could ultimately be located at the GPO.

28. There is very little discussion in the impugned judgment of the trial

Court on how exactly the Appellant could be held to be guilty of the offence of murdering Waziro. As far as the two young children Chillu and Ashu are concerned, her presence with A-1 was spoken to by the coolie (PW-31) and the person near the escalator at the NDRS. Both these appeared to be natural witnesses.

29. However, as far as the recovery of the dead body of Waziro near the GPO was concerned, there was nothing whatsoever to show the present Appellant was at any time found near the dead body.

Conclusion

30. As a result, the Appellant is acquitted of the offence under Sections 364/34, 302/34 and 201/34 IPC insofar as FIR No. 234/2004 registered at PS Kashmere Gate is concerned. On the other hand, her guilt for the offences under Sections 302 and 201 IPC read with Section 34 IPC for murdering the two children Chillu and Ashu and dumping their dead bodies is hereby upheld.

31. The consequence is that the impugned judgment of the trial Court in Sessions Case No.33/10/08 arising out of FIR No. 234/2004 registered at PS Kashmere Gate and the consequent order on sentence is hereby set aside. Criminal Appeal No. 1058 of 2018 therefore stands allowed. The Appellant will fulfil the requirement of Section 437A Cr PC to the satisfaction of the trial Court at the earliest.

32. As far as FIR No. 147 of 2004 registered at PS NDRS from which Sessions Case No. 25/10/08 arises, the conviction of the Appellant for the

aforementioned offence is hereby affirmed. However, as far as the order on sentence is concerned, the Court is of the view that while the trial Court was justified in sentencing the prisoner for life, it is beyond its jurisdiction to further direct that she should not be released for the rest of her life. Such an order is no longer permissible in view of the judgment of the Constitution Bench of the Supreme Court in *Union of India v. V. Sriharan (2016) 7 SCC 1*.

33. Accordingly the impugned order on sentence passed by the trial Court in Sessions Case No. 25/10/08 is modified by directing that for the offence under Section 302 read with Section 34 IPC the Appellant shall stand sentenced to imprisonment for life with the fine amount and the default sentence being unaltered. Her sentence as regards the offence under Section 201 IPC read with Section 34 IPC is left unaltered.

34. Criminal Appeal No. 1057 of 2017 is disposed of and Criminal Appeal No. 1058 of 2017 is allowed in the above terms. The pending applications are disposed of.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MARCH 22, 2018/rm