

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

Judgment reserved on: 10.05.2018

% **Judgment delivered on: 02.07.2018**

+ **CRL.A. 1280/2015**

PATIT SARKAR

..... Appellant

Through: Mr.K.Singhal, Mr.Prasana and
Mr.Nishant Bhardwaj, Advocates.

versus

STATE

..... Respondent

Through: Ms.Aashaa Tiwari, APP for the State.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S. TEJI

J U D G M E N T

VIPIN SANGHI, J.

1. The present appeal has been filed by the appellant- under Section 374(2) Cr.P.C. against the judgment of conviction dated 16.07.2015 and order on sentence dated 17.07.2015 passed by learned Additional Sessions Judge, New Delhi whereby the appellant has been convicted under Section 302 IPC and sentenced to undergo rigorous imprisonment for life and fine of Rs.2,000/- and in default of payment of fine to further undergo imprisonment for three months.

2. The factual matrix emerging from the record is that on 03.08.2013, an information was received by SI Deshraj vide DD No.100B (Ex.PW12/F & E) as per which, Duty Constable from Safdarjung Hospital informed that one Mamita, admitted in the hospital by her husband, had been declared dead. On receipt of said information, SI Deshraj reached the hospital and collected the MLC of Mamita Ex.PW-4/A. In the hospital, her husband Patit Sarkar – the appellant met the IO. Upon inquiry, he informed the IO that his wife fell from the stairs and sustained injuries, due to which she was admitted in the hospital. Dead body of the deceased was got preserved in the mortuary. The accused Patit Sarkar informed that his marriage with the deceased was solemnized on 11.05.2013. He also informed the parental address of the deceased as District 24 North Pargana, West Bengal. Information about the death of the deceased was given to her mother Smt.Nilima on telephone by the accused. Executive Magistrate was informed about the death of the deceased. Crime team was called by the IO (PW-14) which inspected the scene of crime and got it photographed. On 05.08.2013, Smt.Nilima Mistri, mother of the deceased came to the police station. She was produced in the office of Executive Magistrate, Kalkaji. Her statement (Ex.PW-2/B) was recorded. On 06.08.2013, Form 25.35.B was filled up and the dead body was sent for postmortem. After postmortem, the dead body of the deceased was handed over to her husband and mother. The doctor handed over sealed parcels containing clothes of the deceased, thread of sample seal and blood in gauze which were seized. Proceedings under Section 176 Cr.P.C. were conducted. On 12.12.2013, postmortem report of the deceased was obtained vide Ex.PW-11/A in which the doctor opined the cause of death as asphyxia as a result of ante mortem manual strangulation. On the basis of the opinion

given in the postmortem report, the case was found to be covered by Section 302 IPC. The FIR was registered. Further investigation of the case was conducted by Insp. Madanpal Bhati. IO prepared the site plan and recorded statements of the witnesses. On 14.12.2013, accused was arrested and allegedly admitted his guilt. Pointing out memo (Ex.PW-14/A) was prepared at the instance of the accused. Scaled site plan (Ex.PW-13/A) was got prepared from the draftsman. Exhibits of the case were deposited in the FSL. CDR of the mobile phone of the deceased was obtained. After completion of investigation, charge sheet was filed in the Court.

3. Charge for the offence under Section 302 IPC was framed against the appellant, to which he pleaded not guilty and claimed trial.

4. To prove its case, the prosecution had examined 20 witnesses, including PW1-Suraj (landlord of the house), PW2-Mrs.Nilima Mistri (mother of the deceased), PW3-Rambir Singh who assisted the accused in obtaining mobile phone no.9871454760, PW4-Dr.Mukesh Nagar who proved the MLC of the deceased & PW11-Dr.Shabarish Dharam Pal who conducted postmortem on the dead body of the deceased.

5. After completion of prosecution evidence, statement of the accused under Section 313 Cr.P.C. was recorded in which he claimed innocence and denied the entire case of the prosecution. In his defence, appellant examined DW1-Smt.China Mandal.

6. On appreciation of evidence and material brought on record, the trial court convicted the appellant under Section 302 IPC vide impugned judgment dated 16.07.2015 and order on sentence was passed on

17.07.2015. Feeling aggrieved of the same, the appellant has preferred the instant appeal.

7. Argument advanced by the learned counsel for the appellant is that there is no evidence on record against the appellant to conclude that he has committed the murder of his wife. He submits that the deceased was admitted in hospital by the accused himself, and if he had injured/ murdered his wife, he would not have admitted her in the hospital. He submits that there is delay of about 4 months 10 days in lodging the FIR which was registered on the basis of postmortem report. He submits that the mother of the deceased did not implicate the accused. The deceased was admitted in hospital at 2.09 a.m. on 03.08.2013, but she expired at 2.30 a.m. He further submits that the trial court has not dealt with the entire testimony of the doctor who conducted the postmortem. He submits that there is contradiction in the case of the prosecution inasmuch, as, in the death report (Ex.PW5/B), there is mention of head injury and blood coming from the head, which establishes the defence of the accused that the deceased died due to falling from the stairs. He submits that the deceased was alive when she was brought to the hospital. In this regard, he places reliance on the observation made in the post-mortem report Ex.PW-11/A. He submits that no motive to commit the alleged murder has been brought on record, and even the mother of the deceased had not imputed any role to the accused. He submits that the prosecution has failed to establish the intention of the accused to cause the death of the deceased.

8. In support of the above contentions, he places reliance on *Emperor v. Gayanath Das and others 1909 SCC OnLine Cal 183*, in which the issue

involved was whether the deceased died due to strangulation, or rather by throttling, or he died from natural causes such as appoplexy or epilepsy, or the like. The conviction and sentence of the accused were set aside on the premise satisfied that the prosecution did not conclusively establish that the deceased met with his death from throttling, and the alternative theory was equally probable that he died from the effects of some 'fit' under which he was laboring. On the same aspect reliance has been placed on ***Suresh Kumar & ors. v. State of Chattisgarh* 2009 SCC OnLine Chh 180** and ***Babulal v. State of Chhattisgarh*** (CRA No.154/2005 delivered by Chattisgarh High Court on 29.11.2016). Reliance is placed on ***Mayur Panabhai Shah v. State of Gujarat* (1982) 2 SCC 396**, to submit that even where a doctor has deposed in court, his evidence has to be appreciated like the evidence of any other witness, and there is no irrebutable presumption that a doctor is always a witness of truth.

9. Per contra, learned APP for the State has argued that as per the MLC (Ex.PW4/A) of the deceased, when she was brought to the hospital, there was no pulse, and no heart beat, and pupils were fully dilated. Thus, there is no basis for the contention of the accused that the deceased was brought alive to the hospital. She submits that no evidence has been produced on record by the accused to establish that the deceased was suffering from any epilepsy which could result into her fall from the stairs. No suggestion was given to the mother of the deceased in this regard. She submits that the delay in lodging the FIR has been sufficiently explained, as the same was lodged after ascertaining the exact cause of death, which was revealed only after the receipt of postmortem report. She submits that as per the opinion of the doctor, the cause of death of the deceased was manual strangulation,

which implicates the accused/ appellant and it was for him to satisfactorily explain the circumstances in which the death of the deceased occurred.

10. We have heard the submissions advanced by learned counsels for the parties and given our thoughtful consideration.

11. PW1-Suraj was the son the owner/ landlord of the premises where the accused along with his deceased wife were residing on rental basis. PW1 deposed that on the date of incident, he was watching TV in his house. At about 10 p.m., his mother called him and asked him to check the upper floor of the house, saying that she had heard some thud. PW1 went upstairs and found the accused present there having his wife on his legs/lap and she was senseless. The accused took his wife to the hospital and after about half an hour, PW1 came to know that the wife of the accused had died.

12. PW2-Smt.Nilima Mistry is the mother of the deceased. She deposed that on 02.08.2013, accused made a phone call to her after 11 p.m, and informed that Mamita, daughter of PW2 had fallen from stairs. After about 15-20 minutes, accused again called her and informed about the death of Mamita. She arrived at Delhi and identified the dead body of her daughter vide statement Ex.PW2/A. Police recorded her statement Ex.PW2/B. After postmortem, dead body of her daughter was handed over to her vide receipt Ex.PW2/C.

13. PW5-Sh.Ajeet Kumar Chaudhary conducted the inquest proceedings. He recorded the statement of Smt.Nilima Mistry and of Meera Sarkar. He filled up the form Ex.PW5/B for conducting the inquest proceedings. He prepared the application Ex.PW5/C for conducting postmortem of the dead body of the deceased.

14. The deceased was medically examined vide MLC Ex.PW4/A, proved by PW4-Dr.Mukesh Nagar. The postmortem on the dead body of the deceased was conducted by PW11-Dr.Shabarish Dharam Pal vide postmortem report Ex.PW11/A. As per the opinion of the doctor, the cause of death of the deceased was, “*asphyxia as a result of ante mortem manual strangulation*”. All the injuries were found to be ante mortem in nature. It was opined by PW11 that the injuries on the neck were sufficient to cause death in the ordinary course of nature.

15. As per the case of the prosecution, it is alleged against the appellant that he had committed the murder of his wife by strangulating her. The appellant has disputed the case of the prosecution by submitting that he had no role to play in the death of his wife. She died of her own, as she fell from the stairs.

16. To deal with the rival contentions of the parties, we have gone through the entire material available on record. Ex.PW-4/A is the MLC of the deceased prepared on 03.08.2013, i.e. the date of the incident at 02:09 a.m. Pertinently, in the said MLC on examination, the doctor did not find any pulse or heartbeat and the pupil were fully dilated. She was declared dead and the body was packed and sent to mortuary for post-mortem. Thus, the contemporaneous medical record shows that the deceased was already dead when examined at the hospital. Learned counsel for the appellant has vehemently argued that the deceased was still alive when she was brought to the hospital. In this regard, he placed reliance on the observation made in the post-mortem Ex.PW-11/A under the heading “Brief history as per I/O and inquest papers”. In the post-mortem PW-11/A it is recorded “*Alleged*

H/O fall from stairs over head on 02/08/13 at around 10:00 pm, following which she was brought to S.J. Hospital and admitted on 03/08/13, where during the course of treatment patient expired on 03/08/13 at 02:30am.”

17. Reliance placed on the aforesaid recording made in the post-mortem PW-11/A is completely misplaced. This is for the reason that the doctor who conducted the post-mortem and prepared the post-mortem report was not the doctor who attended to the deceased when she was brought to the hospital. The deceased was already dead when the post-mortem was conducted and the doctor conducting the post-mortem, i.e. PW-11 Dr. Shabarish Dharampal was not the one who attended to the deceased when she was brought to the hospital. He has merely recorded the brief history as per I/O / inquest papers. Thus, the said recording is neither here nor there. To determine the aspect as to whether, or not, the deceased was alive when brought to the hospital, it is the MLC Ex.PW-4/A which is relevant and the same does not record that the deceased was alive when brought to the hospital. On the contrary, the patient was found to be pulseless and did not have any heartbeat and her pupil were dilated which clearly shows that she was dead when examined at the hospital.

18. PW11-Dr.Shabarish Dharma Pal conducted the postmortem on the dead body of the deceased vide report Ex.PW11/A. The report Ex.PW11/A shows that the doctor found nine external injuries on the person of the deceased i.e. (i) laceration over inner aspect of upper lip, (ii) abrasion-contusion with indentation of teeth over inner aspect of right upper lip, (iii) lacerated wound measuring 1.5 cm x 0.3 cm x subcutaneous deep over right side of front neck in an oblique manner, placed 3 cm below right angle of

mandible, (iv) lacerated wound of size 2.5 cm x 0.3 cm x subcutaneous deep over left side of front of neck in an oblique manner, the lower medial end was placed just lateral to the midline and 3 cm below the chin, the upper lateral end was placed 1.0 cms below the lower border of left mandible, (v) crescentric reddish abrasions of size ranging from 0.5 cm x 0.2 cm to 1 cm to 0.2 cm, arranged in a vertical fashion, one below the other (three in number) over left side of neck, placed 3 cm below left angle of mandible, (vi) multiple reddish scratch abrasion over the front of neck, (vii) lacerated wound with surrounding abrasion-contusion on the dorsum of right foot, (viii) crescentric reddish abrasions on the dorsum of right foot, and (ix) crescentric reddish abrasions on dorsum of right foot.

19. On internal examination, the doctor found extravasation of blood present in and around subcutaneous tissues and muscles of bilateral neck (more on the right side corresponding to injury no.3) and around hyoid and thyroid cartilages. The cause of death was asphyxia as a result of ante mortem manual strangulation. The doctor found all the injuries on the person of the deceased ante mortem in nature. The injuries on the neck of the deceased were found to be sufficient to cause death in ordinary course of nature.

20. During the cross-examination, PW11 stated that he did not observe blood from the nose of the deceased. Her eyes were open. He categorically stated that it was not possible that the deceased would have fallen from somewhere or suffered injuries due to fall which would have resulted in her death. He observed finger marks on the neck of the deceased. He did not observe any fracture on the arms or legs of the deceased. He could not say if

it was a homicidal case, but it was not a case of suicide. He stated that he had examined the dead body with a view after seeing the history of patient as epileptic fits. As per his report Ex.PW11/A, there was no head injury. The lacerated wounds might be caused by a blunt force. The lacerated wounds mentioned at serial no.3 and 4 might have been caused by ragged and irregular surfaces. He further stated that the finding that the brain was congested and edematous, was not suggestive of epileptic fits. Though, he admitted that injury no.2 might be possible in cases of epilepsy, however, he voluntarily stated that injury no.1 was indicative of a blunt manual trauma, which was possible in cases of manual strangulation and smothering. On a specific question whether the injury no.1 mentioned in the postmortem report could be possible by any other means, PW11 replied that such injuries are more common in cases of manual strangulation and smothering. He specifically stated that injury no.5 i.e. crescentric reddish abrasions were not possible by graze. He further stated that a patient having fit of epilepsy while on stairs may lose consciousness and may fall but in cases of fall of tumbling nature, there has to be more injuries on elbows and other parts of body.

21. As per the testimony of doctor (PW11) and the post mortem report Ex.PW11/A of the deceased, the cause of death of the deceased was manual strangulation and not by fall from the stairs, as claimed by the appellant. Though PW11 was cross-examined at length and the defence tried to make out a case that the deceased died due to falling from the stairs as she had suffered some epilepsy 'fit' at that time, but PW11 stuck to his ground that in cases of falling from stairs either tumbling or otherwise, the injuries on the person would be caused on elbow or on other body parts. As per the

testimony of PW11, he found finger marks on the neck of the deceased and the cause of death was manual strangulation.

22. So far as the contention of the appellant that the deceased was suffering from epilepsy is concerned, no documentary proof had been produced on record by the accused to show that the deceased was ever under treatment for epilepsy. Even no question was put by the appellant to the witness PW2 (mother of the deceased) to the effect that her deceased was suffering from epilepsy, which resulted into her fall from the stairs. The theory regarding 'fits' came about for the first time only while admitting the deceased in the hospital vide MLC Ex.PW4/A in which the history of the patient was given as fallen from the stairs and suffering from seizures. This history was given by the accused himself. This self serving 'history' is not backed by any previous medical record of the deceased, which the appellant-being the husband, would have been aware of, and in possession of had there been any truth therein. Though the appellant examined one witness in his defence, but the said witness had also not stated that the deceased was suffering from any epilepsy or had a history of seizures. Thus, as per the testimony of PW11 and postmortem report Ex.PW11/A, it is proved beyond any reasonable doubt that the death of the deceased was a homicidal death and not a natural death or caused while falling from the stairs, as claimed by the appellant.

23. The next circumstance brought on record is that at the time of the incident, the appellant and his wife were alone in the tenanted room and it was for the appellant to explain the circumstances which resulted in the death of his wife. To prove this circumstance, PW1-Suraj, son of the owner

of the house deposed that on the day of the incident while he was watching TV, his mother told him to check the upper floor of the house as she heard some thud. PW1 went upstairs and found the accused having his wife on his legs/lap. At that time, wife of the accused was senseless. On enquiry, accused told him that his wife had fallen from the stairs. The deceased was taken to the hospital by the accused where she was declared dead.

24. The accused had taken the defence that the deceased had fallen from the stairs on the day of the incident which was the cause of her death. The accused has also taken the defence that at the time of the incident, his sister DW1-Smt.China Mandal was present at his room. DW1 in her testimony deposed that on 2.8.2013 at about 9.30 p.m., she was returning to her house and her brother Patit Sarkar met her near traffic signal. Accused requested her to go to his house. DW1 went to the house of the accused. Patit Sarkar went to the bathroom after leaving her inside the house. She heard a cry of someone outside his house, and went there where she saw that the wife of the accused had fallen on the ground from roof of their house.

25. The testimony of DW-1 is not reliable and trustworthy for several reasons. PW1 is the natural witness, who immediately after the incident, went up the stairs and found the deceased in the lap of the accused. He has not stated anything about the presence of DW1 at the tenanted room where accused along with his wife was residing. During cross examination of PW-1, it was not suggested to him that DW-1 was also present at the spot when PW-1 went up the stairs. It is also matter of record that the information about the incident was given to the police by the accused which was recorded vide DD No.100B, Ex.PW12/F. As per the endorsement

Ex.PW12/E made by SI Deshraj, he had enquired about the incident from the accused who informed that his wife fell from the stairs. In his statement to the police, accused had not stated anything about his sister (DW1) that she was present at his room at the time of incident. Even the conduct of DW1 would be quite unnatural, that she would not accompany the accused and his injured wife to the hospital when she allegedly fell on the stairs and became unconscious, if she was indeed present.

26. Thus, the only inference which can be drawn against the accused is that at the time of incident, he and his wife alone were present in the room and as per Section 106 of the Indian Evidence Act, the burden to prove what had happened in the room between him and his wife, was on the accused, which he failed to prove. On the other hand, the prosecution has successfully established on record that the accused has committed the murder of his wife and the said facts have duly been proved from the testimony of the doctor (PW11) and post mortem report of the deceased vide Ex.PW11/A.

27. So far as the contention of the appellant that there was head injury on the person of the deceased and blood was oozing from the said injury is concerned, the said contentions are immaterial as it has been conclusively proved on record that the death of the deceased as homicidal one. The fatal injury has been opined by the doctor to be asphyxia as a result of ante mortem manual strangulation.

28. So far as the submission of learned counsel for the appellant that there was inordinate delay in the registration of the FIR is concerned, the said delay, in our view, has been sufficiently explained by the State. It was only

upon receipt of the post-mortem report – which was prepared on 12.12.2013 by SI Deshraj, that the crime came to the notice and consequently, the FIR came to be registered on the very next date, i.e. 13.12.2013. We may observe that the post-mortem itself was done on 06.08.2013, as is evident from PW-11/A, the endorsement made thereon shows that the same was delivered to SI Deshraj only on 12.12.2013. Thus, there is no delay whatsoever in the case being registered by the police.

29. In view of the above mentioned discussion, we are of the view that the prosecution has successfully established all the circumstances against the appellant/accused and that he had committed the murder of his wife. The chain of events is complete which points towards the guilt of the appellant. The appellant has failed to make out any ground in support of the present appeal. Consequently, the judgment of conviction is upheld and the sentence awarded to the appellant is maintained.

30. Accordingly, the present appeal is dismissed.

(VIPIN SANGHI)
JUDGE

(P.S. TEJI)
JUDGE

JULY 02, 2018