



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

NEUTRAL CITATION NO: 2022/DHC/003075

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Reserved on: 22nd July, 2022

Pronounced on: 16th August, 2022

CRL.A. 27/2018

RAJESH

..... Appellant

Represented by: Mr. Azhar Qayum, Mr. Narender Kumar, Mr. Shahamuddin Zahri & Mr. Devansh Sehgal, Advocates.

versus

STATE

..... Respondent

Represented by: Mr. Ashish Dutta, APP for the State with A.S.I. Rakesh Kumar, P.S.: Baba Hari Dass Nagar.

**CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
HON'BLE MR. JUSTICE ANISH DAYAL**

JUDGMENT

ANISH DAYAL, J.

1. By this appeal the appellant assails the judgment dated 7th October, 2017 convicting him under Sections 302/201 IPC and order on sentence dated 31st October, 2017 sentencing the appellant to life imprisonment for offence punishable under Section 302 IPC and rigorous imprisonment for 5 years for offence punishable under Section 201 IPC, alongwith a fine of Rs.3000/- and Rs.2000/- respectively for



each of the offences and in default, additional rigorous imprisonment for 6 months. All sentences were to run concurrently.

The Incident:

2. The case of the prosecution was that the appellant used to have frequent quarrels with his wife Saroj and on 2nd November, 2011 at about 10:00 p.m. when he came back after finishing his work duty, parked his mini bus bearing no.3572, took out an iron rod and *pana* (tyre bolts spinner) and decided that in case his wife quarreled with him, he would teach her a lesson. Thereafter on opening the door, his wife started quarreling with him and he gave 3-4 blows on her head with the *pana* as a result which she fell down. He then gagged her mouth with cloth and killed her. The appellant took the dead body in the mini bus and threw it in a jungle near Chhawla drain. The next day he lodged a false complaint that his wife had eloped with someone but when his daughter enquired from him about his wife / her mother on subsequent days and his brother-in-law started suspecting foul play, he got scared and went to the police station and got his statement recorded in P.S. Bindapur. Thereafter, upon his disclosure, the dead body of his wife was recovered as also the weapon of offence i.e. *pana* and the cloth used for gagging the mouth of the deceased.

3. FIR No.187/2011 was registered at PS Baba Haridas Nagar on the basis of DD No.23A on 8th November, 2011. After culmination of the investigation, the appellant was charge-sheeted and charges were framed under Section 302/201 IPC to which he pleaded not guilty and claimed trial. The prosecution examined 29 witnesses, statement of appellant under Section 313 Cr.P.C. was recorded and he himself got examined as the sole defence witness.



Submissions by the Appellant : NEUTRAL CITATION NO: 2022/DHC/003075

4. The appellant contended that the impugned judgment and the order on sentence are devoid of merits and contrary to the material available on record. The learned defence counsel contended that the learned Trial Court failed to appreciate that the so called confessional statement given by the appellant to PW-29 Ct. Naresh Kumar in PS Bindapur on 8th November, 2011 was not admissible under Section 25 of Indian Evidence Act and further, confessional statement given by the appellant at P.S. Baba Haridas Nagar was also not admissible under Section 26 of Indian Evidence Act. Likewise, his disclosure statement made under Section 27 of the Indian Evidence Act was inadmissible without other independent evidence corroborating the purported recovery since no blood stains were found on the alleged weapon of offence nor in the bus that was claimed to be used for carrying the dead body of the deceased. It is contended that no independent/ public witness was associated at the time of alleged recovery of the dead body or alleged recovery of the weapon despite being available. The appellant further contended that learned Trial Court failed to appreciate that neither the mother of the appellant nor his two children, who stayed in the same house, heard any noise or hue and cry at the time of alleged murder and as per PW-28, Investigating Officer (IO) Rajbir Singh no enquiry had been made by him from them. The senior scientific officer stated in her testimony that blood detected at the house of the appellant was not sealed by her but was sealed by the Investigating Officer and therefore, there was a possibility of tampering by the police officials in order to falsely implicate the appellant.

5. The appellant contended that the learned Trial Court failed to appreciate that the appellant himself lodged DD No.30B on 3rd



November, 2011 at P.S. Baba Haridas Nagar reporting that his wife was missing and she had eloped but no action was taken on the same. The appellant, in his statement recorded under Section 313 Cr.P.C., stated that his wife was not present at home on the night of 2nd November, 2011 when he returned home from his work but reportedly eloped with Sandeep and later when Sandeep was apprehended, he disclosed that he had murdered his (appellant's) wife and dead body was recovered at the instance of Sandeep, who was not summoned by the learned Trial Court and instead the appellant was falsely implicated.

6. As per the appellant there were different views possible about the location specifics of the appellant at the time of alleged crime and therefore, benefit of doubt be given to him. He stated that he was working as driver of a bus and on the fateful night he was present at Oberoi Hotel since he used to drop off the staff and on that night as well, he had gone to his house after dropping off the staff. PW-19 Rajiv Ranjan, Nodal Officer had stated that the mobile number of the appellant between 09:09 PM to 11:08 PM was in area of Mitraon, at 01:19 AM still in the area of Mitraon and thereafter at 06:02 a.m. it was in the area of Gopal Nagar, Najafgarh i.e. the residence of appellant from which it can be safely inferred that the appellant was performing his duty to pick and drop the staff of Hotel Oberoi.

7. The appellant contended that the prosecution had failed to prove any motive behind the offence as the factum of a quarrel between the appellant and his wife cannot simply be the reason of committing murder of one's wife, there was no eyewitness to the alleged homicide; the *post mortem* report noted that the death was a week old and the dead body was discovered by the police on 8th November, 2011.



8. Learned APP on behalf of the State countering the submissions of the appellant, submitted that the testimonies of police witnesses namely PW-10, PW-23 and PW-28 were consistent and that the appellant had confessed before PS Bindapur and PS Baba Haridas Nagar and the dead body, the weapon of offence and the bus were recovered at the behest of the appellant.

9. Learned APP further contended that it was only the appellant who could have identified the dead body at the specific place near the Chhawla drain as the body had got distorted having been one week since death. The nature of external injury in the *post mortem* report included ligature (strangulation marks), depressed skull fracture and linear fracture of left parietal in the skull which, as per the opinion of the doctor, were caused by hard blunt force impact and were sufficient to cause death in ordinary course of nature.

The Evidence:

10. PW-29 Head Constable Naresh Kumar testified that on 8th November, 2011 at about 3:45 p.m. the appellant (whom he identified in the court) came to PS Bindapur and stated he was working as a driver and gave the details of his family members. The appellant also stated that on 2nd November, 2011 he had committed murder of his wife Saroj and had filed a false missing report about her at PS Baba Haridas Nagar. PW-29 recorded DD No.20A and reported the matter to the SHO and the investigation was handed over to SI Jitender who took the accused to PS Baba Haridas Nagar. PW-20 SI Jitender produced the appellant at PS Baba Haridas Nagar and another DD No.23A (Ex.PW-15/C) was lodged



and marked to PW-23 SI Amit Kumar. PW-29 and PW-23 along with PW-6 Constable Navin and another policeman went with the appellant to Chhawla drain near Power House from where the appellant got recovered a dead body of a lady from the bushes, whom he identified as deceased Saroj, his wife. The SHO PS Baba Haridas Nagar and the crime team reached the spot and took photographs. PW-23 prepared the *rukka* and accordingly FIR No.187/2021 was registered.

11. Investigation was taken over by PW-28 Inspector Rajbir Singh who prepared the site plan Ex.PW-20/A of the place of recovery and who lifted 2 exhibits which were blood stained grass and some hairs of the deceased which were sealed and exhibited as PW-20/B. The appellant was accordingly arrested by the Investigating Officer PW-28 and arrest memo (Ex.PW-20/C) and personal search memo (Ex.PW-20/D) was prepared. PW-20 stated that the alleged place of recovery was at a distance of about 10 to 12 km from PS Baba Haridas Nagar and no public person was asked to join the proceedings. He stated that there were street lights on both sides of *nallah* and ongoing traffic there but was dark in the area of recovery at 6:00 p.m. As per the site plan Ex. PW-20/A, the body was found in an area next to a drain and alongside the main road with traffic thoroughfare. As per PW-20, there were a number of bushes in that area. Ex. PW-12/A is the Crime Team Report which records its arrival at the spot under DD No.23A at about 6:00 p.m. and also mentions that the body was found in highly decomposed state and that the recovery was made at behest of the appellant, the husband of the deceased.

12. The body was sent for *post mortem* which was conducted by PW-17 whose report stated that the body was found in decomposed



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condition, maggots present all over the body, there was peeling off skin with parts of body having been eaten by animals, body was completely crushed and bruises were present all over it. The report further stated that there were ligature (strangulation) and pressure abrasion over sides of neck and nape of neck; depressed skull (parietal bone) fracture (2.5 x 2 cms area) and linear fracture of left parietal and temporal skull bones and thus concluded that the cause of death was due to asphyxia following ligature (strangulation) alongwith craniocerebral damage (head injury) consequent to the injuries. He further testified that all the injuries were *ante-mortem* and were caused by hard blunt force impact. The time since death was approximately one week at the time of *post mortem* examination and the injuries were sufficient to cause death in ordinary course of nature.

13. PW-17, after reviewing *post mortem* report and examining the weapon of offence (*pana*), gave his report (Ex. PW17/C) stating that the injuries were caused by hard blunt force impact and could have been possible by the weapon of offence i.e. '*pana*' or other similar weapon of similar dimensions.

14. PW-2, the scientific officer, Forensic Science Laboratory (FSL) testified that the blood was detected on the bunch of hairs and nail clippings as well as on shirt and other underclothes of the deceased, however, during the serological examination no reaction of origin was found.

15. PW-11, the other scientific officer, FSL who visited the house of the appellant on 11th November, 2011 also inspected the minibus had stated that during inspection blood was detected at few spots inside the house but there was no blood stain in the minibus.



16. The daughter of the appellant was examined as PW-4 who stated that the appellant and her mother (deceased) used to quarrel frequently with each other as the appellant used to consume alcohol. She stated that since she was posted at Ajmer, she used to call her mother but on 2nd November, 2011 when she called her mother, she didn't pick up the call and instead, the appellant did but said nothing about her mother except that he was having stomach ache and only said that she had left from home. PW-4 again called her mother on 3rd November, 2011, 4th November, 2011 and then 5th November, 2011 and continued on subsequent dates till 8th November, 2011 and each time the appellant picked up the phone and said that her mother was not well. It was only on 8th November, 2011 that the appellant asked her to come back home and she took leave from her job to come back home on the night of 8th November, 2011.

17. In her cross examination, she stated that the appellant used to beat her mother even earlier and as a result, she had injuries on her head and had been admitted in hospital on an earlier occasion. She stated that on 8th November, 2011 her father told her to come back to take care of the home and also said that 'everything is finished at home'. She further stated that when she took leave and came home that night, the police officials came to their house with her father who confessed that he had assaulted her mother 3-4 times with iron *pana* and then strangulated her and took the dead body in the bus that he used to drive and threw the body in Chhawla drain near the bushes.

18. PW-5, Zile Singh, the owner of the minibus testified that on 2nd or 3rd November, 2011 the bus was driven to the office by Ravinder and when he questioned him (Ravinder) as to why the regular driver (the



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appellant) had not brought the bus, he replied that the wife of appellant had run away on that day. PW-5 also handed over the attendance register of the year 2011 for the months of October and November (Ex.PW5/B). As per the register, the accused was noted at Sl. No. 35 for the month of October, 2011 and at Sl. No. 25 for the month of November, 2011 and entries were signed by the employee/appellant.

19. The appellant in his statement recorded u/s 313 Cr.P.C. stated that his daughter PW-4 Renu had been married to one Sandeep in the year 2009 without his consent and then she obtained divorce from Sandeep in the year 2010 and joined Central Reserve Police Force (CRPF). Thereafter, Sandeep used to frequently come to the appellant's residence and forced him and his wife (since deceased) to disclose the mobile number and whereabouts of PW-4. He further stated that his deceased wife had lodged several complaints at PS Baba Haridas Nagar. According to him, on 2nd November, 2011, when he returned home after duty his wife was not present and he was told by his neighbor Mukhtyar (expired) that she had gone with Sandeep in the day time and she did not return till next morning. He then informed the police that his wife had eloped with Sandeep. According to the appellant, Sandeep was actually apprehended by the police and he had confessed having murdered the wife of the appellant and the dead body was also recovered at the instance of Sandeep but the police did not take any action against him and instead falsely implicated the appellant.

20. The appellant presented himself as DW-1 and offered the same testimony. However, in his cross examination he stated that on 2nd November, 2011 from 7.00 a.m. to 12:00 p.m. in the night he was present in the bus that he used to drive at Oberoi Hotel and was not



present at his residence during the time of commission of offence. He admitted not having lodged any complaint against Sandeep whom he alleged to have eloped with his wife.

21. The Nodal Officer of Tata Teleservices was examined for the purpose of call records and location charts of the mobile phones of deceased (9268699586, 9212935004), the appellant (9266722152) and his daughter PW-4 (8823909032).

Analysis :

22. After careful appreciation of the documents on record and contentions of the parties, this Court is of the opinion that the prosecution has successfully proved its case beyond reasonable doubt *inter alia* for the following reasons:

23. Even though the confessional statement of the appellant before PS Bindapur was not admissible as evidence against the appellant, it was relevant to the extent that the appellant disclosed that he worked as a driver and that he had a wife with whom he used to live and two small children aged about 2½ years & 8 years and one elder daughter aged about 22 years who was working in CRPF and an aged mother at home. That fact that he was living together with his wife and family was also corroborated later by the testimony of his elder daughter, PW-4.

24. It is evident that the recovery of dead body of deceased wife was at the instance of the appellant from bushes near the Chhawla drain. The appellant was able to identify the dead body which was highly decomposed, as that of his wife. As per the site plan and the testimony of the police witnesses, the place of recovery was heavily covered by bushes and was 10-12 kms away from PS Baba Haridas Nagar. Even



though, there was a thoroughfare next to the area crossing over the drain, it would have been difficult for any member of public to spot a decomposed body in the bushes since there was traffic constantly moving on the road and it was not a congested locality.

25. Subsequently, the identification of the dead body was also established by PW4, the daughter and PW7 and PW8, brothers of the deceased. DNA reports (Ex. PW28/F) also established that she was biological daughter of the parents. It was also at the behest of the appellant that *pana* was recovered on pointing out by the appellant from the bus that he was driving. The ownership of the bus and that it was driven by the appellant was further corroborated by the testimony of PW-5 Zile Singh as also through the attendance register, the signatures on which were admitted by the appellant. The testimonies of all the police witnesses namely, PW-10, PW20 and PW28 are consistent as to the circumstances of the recovery of the dead body and the weapon of offence.

26. As regards the contention of the appellant that there was discrepancy in testimony of PW-12 that there were about 16-17 persons present at the time of the recovery of body, while PW-20 had stated that no public person was asked to join, it is evident that the mention of 16-17 persons included the number of police team and the crime team besides some curious members of public passing by at the time of recovery. Though it is stated by PW-20 that no public person was asked to join the proceedings, this would not discredit the fact of recovery of dead body of the deceased at the instance of the appellant.

27. The motive in this case was well established since not only had the deceased made several police complaints against the appellant



(which are evident from the testimonies of PW-18, PW-21, PW-22, PW-24, PW-26, the police officers who had recorded her complaints *inter alia* in November and December, 2020 a year before her death) but also from the testimony of PW-4 the daughter who testified that her parents used to quarrel as the appellant used to consume alcohol and beat her mother.

28. What is most critical in the chain of circumstantial evidence is the post event conduct of the appellant on various counts which is considered relevant and admissible under section 8 of Indian Evidence Act if it has close nexus with a fact in issue or relevant fact and to show criminality of the intent of the accused (refer *inter alia* to ***State v. Navjot Sandhu*** (2005) 11 SCC 600; ***Sardul Singh Caveeshar v. State of Bombay*** 1958 SCR 161 and ***Prakash Chand v. State*** (1979) 3 SCC 90.

29. *Firstly*, upon PW-4 having called her mother on the day of incident, the appellant had picked up the phone and only stated that he had stomach ache and she had left the house. If indeed, as per the appellant, the deceased had eloped with Sandeep who was ex-husband of PW-4, there was no reason for the appellant not to disclose this to her daughter, particularly, since PW-4 was in CRPF. Had the appellant been so concerned, he ought to have immediately expressed and disclosed this fact to PW-4.

Secondly, the appellant continued to mislead PW-4 in her subsequent calls to her mother on various occasions between 3rd to 8th November, 2011.

Thirdly, it was upon consistent enquiries by PW-4 that the appellant broke down on 8th November, 2011 and asked his daughter, PW-4 to come back and take care of the home since ‘everything is finished at



home' and when she came back that night the police came with the appellant who informed her as well that he had murdered her mother on 2nd November, 2011. Even though the confession in presence of the police is not admissible, the appellant's conduct misleading the daughter upto 8th November, 2011 and then calling his daughter back to take care of the home and saying that 'everything is finished' is another link in the chain of circumstances.

Fourthly, it is inexplicable as to why the appellant would not file a written complaint against Sandeep since as per him, his wife had eloped with Sandeep and was missing since 2nd November, 2011. Even though he registered a missing report, but he did not mention therein that his wife eloped with Sandeep nor did he follow the complaint with any written report to the police.

30. As per the analysis of call records of the deceased, the appellant and PW-4, their daughter, it was evident that location of the mobile phone of the deceased between 2nd to 4th November, 2011 was shown in Gopal Nagar, where the appellant's house was located. It is yet again inexplicable if as per the appellant his wife had left the house on 2nd November, 2011, why would she leave her mobile phone at the house. Further, as rightly observed by the learned Trial Court, in normal situations a person would not leave the house without his/her mobile phone. Further, the appellant picked up all the calls received on the mobile phone of the deceased after 2nd November, 2011 and even the appellant admitted having attended calls made by her daughter, PW-4. These call records are consistent with the call records of PW-4, the daughter of the appellant. The plea of the appellant that he was in fact at Oberoi Hotel from 7:00 a.m. to 12:00 p.m. on 2nd November, 2011 is



belied by the location of his mobile phone at about 08:47 p.m., which was at Gopal Nagar i.e. in the vicinity where the house of the appellant is situated and later in the night on the same day in the area of village Mitraon. Thus, the testimony of appellant (as DW-1) has to be completely discredited on the basis of the call records and location charts.

31. The contention of the appellant that the *post mortem* report and the application for autopsy mentioned that the body was recovered by the police and was found lying near canal and therefore, creates a doubt on recovery, is untenable simply for the reason that the note of brief facts appended with the application for autopsy categorically states that the information regarding murder of the deceased by her husband was received at PS, Hari Nagar vide DD No.23A, dated 8th November 2011 and that the dead body was also identified by the appellant as that of his wife. Nothing can possibly turn just on the generic description in the *post mortem* report that “body recovered by the police”, since testimony of the all police witnesses are consistent as regards recovery.

32. It is also noteworthy that the defence did not put forward any suggestion in cross-examination of PW-4 regarding Sandeep, which would have been obvious in the event the appellant’s explanation would need to be substantiated. Nor was such suggestion put to the brother of the deceased PW-16. The copy of report DD No.30B (PW-23/DX), recording of the missing report lodged by the appellant does not mention Sandeep.

33. It is evident that the appellant after murdering his wife, tried to destroy the evidence by taking the dead body as well as the clothes worn by him to the area near the canal which was considerably dark and



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isolated and was heavily scattered with bushes. Further, the cause of the death was duly corroborated by PW-17, the doctor who conducted the *post mortem* on the body of the deceased who had opined that the death was due to asphyxia following ligature (strangulation) along with craniocerebral damage (head injury) consequent to injuries, which were *ante mortem*, caused by hard blunt force impact and were sufficient to cause death in ordinary course of nature. Further, as per PW-17, weapon of offence i.e. *pana* could have caused injuries on deceased.

Conclusion :

34. Having arrived at the above conclusions, this Court is of the considered view that the case of the prosecution which is duly supported by circumstantial evidence and medical reports proves beyond reasonable doubt that the alleged offence has been committed by the appellant. Consequently, this Court finds no error in the impugned judgment of conviction and order on sentence by the learned Trial Court.

35. Appeal is accordingly dismissed.

36. Copy of this order be uploaded on website and be also sent to Superintendent, Tihar Jail for intimation to the appellant and updation of records.

(ANISH DAYAL)
JUDGE

(MUKTA GUPTA)
JUDGE

AUGUST 16, 2022/sm