



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

NEUTRAL CITATION NO: 2022/DHC/003386

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Reserved on. 27th July, 2022

Pronounced on: 1st September, 2022

CRL.A. 1157/2017

SIKANDER SONI AND ANR

..... Appellant

Represented by: Mr. Madhav Khurana, Ms. Riya Arora, Advs. for appellant
Sikander @ Soni.
Mr. Himanshu Anand Gupta,
Adv. (DHCLSC) for appellant
Pradeep.

versus

STATE

....Respondent

Represented by: Ms. Shubhi Gupta, APP for State

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This appeal assails the judgment dated 6th May, 2017 whereby the appellants have been convicted for the offences punishable under Sections under sections 302/201 read with Section 34 IPC and Section 376(2)(g) IPC (as it stood before the amendment in 2013) and order on sentence dated 1st July, 2017 awarding rigorous imprisonment for life (not less than 20 years) and a fine of Rs.25,000/- (simple imprisonment for one year for default in payment) for offence punishable under section 302/34 IPC; rigorous imprisonment for life for offence punishable under section 376 (2)(g) IPC and a fine of Rs.20,000/- (simple imprisonment



for one year for default in payment) and rigorous imprisonment for a period of three years for offence punishable under section 201 IPC and a fine of Rs. 5,000/- (in default of payment to undergo simple imprisonment for three months). All sentences were to run concurrently.

The Incident:

2. As per the case of the prosecution on 24th April, 2012 at about 7.30 a.m., information was received at the Police Post Nehru Place vide DD No.10 that a dead body of a female is lying in a semi naked condition. Police rushed to the spot and found a dead body of a female aged 24-26 years near Metro flyover adjacent to Metro Pillar No. 127 in semi naked condition, wearing black/white colour top, blood oozing out from the mouth, nose and ears of the body and injury marks were all around its face. A black colour jeans with its zip broken was lying at a distance of about 10 steps from the body and broken hairs were also on the body of the deceased. The police found a tattoo with the word 'Javed' on her left forearm and on her left middle finger words 'PG' were tattooed. On her right forearm, there was another tattoo of *trishul and damroo*. She was wearing a nose pin, two pairs of ear rings, black string with locket around her neck and a ring with stone on her right hand finger.

3. SI Ranjan Kumar prepared *rukka* and case was registered. Crime team and the photographer were called and Inspector Ishwar Singh took over the investigation. On the same day /night, a missing report of a lady namely the prosecutrix having the same description was found lodged by one Javed, resident of Rohini at the P.S. K.N. Katju Marg, Rohini Upon further inquiry the said Javed identified the deceased to be his wife. He stated that in the evening of 23rd April, 2012 he had



received a call from Hamida, his first wife that the prosecutrix had left her son Junaid with her and gone to the market and had not returned nor was she picking up the phone. When Javed called the prosecutrix around the evening, she told him that she had come to the Lajpat Nagar market to do shopping for Junaid. However, when she did not reach home till 9:30 p.m., Javed again spoke to her and she mentioned that she had gone to the Defence Colony market and had taken a taxi for reaching Rohini and the taxi number was 9551. This was the last communication that Javed had with the deceased.

4. After the *post mortem* the dead body was handed over to Javed while exhibits had already been taken and handed over to the police. The autopsy surgeon opined the cause of death as asphyxia due to combined effect of *ante mortem* smothering and throttling, sufficient to cause death in ordinary course of nature individually as well as collectively. There were findings suggestive of sexual assault and the swabs were preserved for forensic examination and section 376 IPC was therefore added to the FIR. Extensive search was carried out for tracing the particular taxi and the call records of the deceased were analyzed. The analysis of the call records revealed that the deceased was at Defence Colony A Block Market at about 10:00 p.m. when she communicated with her husband Javed and then at about 11:15 p.m. she was at Kailash Colony, New Delhi and then at Lajpat Nagar till about mid night. Post mid night her location was in the vicinity of Satya Niketan, Nanak Pura, Moti Bagh. The last call was made by Hamida on the cell phone of the deceased which according to Hamida was attended by some unknown person.

5. On the evening of 13th May, 2012 at about 3:30 p.m., SOS unit of Crime Branch Kotwali received an information vide DD No.7 about the



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accused persons and at the pointing out of the secret informer, accused Pardeep was apprehended from the service lane Moti Bagh with Taxi No. PB 01 9551 who disclosed of his involvement in this case. Upon his disclosure, other accused Sikander Singh @ Soni was arrested from Nanak Pura who also disclosed of his involvement and his taxi was taken into possession. Upon arrest of both the appellants, they pointed out the place of incident near Nehru Stadium where they had gang raped the deceased in a car and also got recovered a pair of black slippers and a small black purse from the bushes on the road side leading from Kalkaji temple to Satyam Cinema, Nehru Place. Further, appellant Pardeep took the police party to his house at village Takhtgarh, P.S. Noor Pur Bedi, District Ropar, Punjab and got recovered two small rings (one ring and one small ear ring) belonging to the deceased. All the exhibits were sealed and seized by the investigating team and CDRs of mobile number of deceased as well as of appellants were also analyzed. After investigation, charges were framed to which the appellants pleaded not guilty and claimed trial. The prosecution examined 43 witnesses, statements of the appellants were recorded under Section 313 Cr.P.C. and the appellants led evidence of two witnesses in defence.

Submissions by the Appellant:

6. The appellants contended through learned counsel appearing on their behalf, through appeal and written submissions that the judgment on conviction would not be sustainable on the basis of evidence on record since the case of the prosecution was based completely on circumstantial evidence and the chain of such evidence was incomplete. They contended that there was no public witness to the arrest of appellant Pardeep and the Investigating Officer did not give any notice to any person for joining the investigation. It is contended that no CCTV



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footage was taken from that area despite 18 cameras installed at the relevant area. Further, appellant Pardeep was arrested on 13th May, 2012 at 7:00 a.m. from his village at District Ropar, Punjab but his arrest was shown from Delhi at 4:25 p.m. and appellant Sikander Singh @ Soni was shown to have been arrested from Village Mochi, Nanak , Delhi at 4:55 p.m. but no public person was joined when the alleged arrest was made though, as per the appellants, Sikander Singh @ Soni was arrested on 12th May, 2012 from Sector 62, Noida. The arrests of the appellants being manipulated, discredits the case of the prosecution. The appellants contended that the prosecution cannot base its investigation on an incomplete vehicle number 9551 and therefore, benefit of doubt should be given to them. Further, the alleged recoveries at behest of Sikander Singh @ Soni were false and fabricated and the appellants have unnecessarily been implicated as is evident from material contradictions in the testimonies of PW-24 Javed and PW-11 Hamida. Moreover, there was delay of several hours in lodging the missing report by Javed and that recovery of the jewellery pieces are of very less value and commonly available.

Submissions by the Prosecution:

7. The learned Additional Public Prosecutor on behalf of the state countered the submissions of the appellants and submitted that what was the case of blind rape and murder was finally proved beyond reasonable doubt and the appellants had rightly been convicted. The medical evidence confirmed the DNA of the appellants on the deceased's body and tracing of the taxi No.9551 had led the police to the appellants. Analysis of the CDR records was also conclusive as the location towers were matching with the accused with that of the deceased and that all disclosures and recoveries were made at the behest of the appellants.



The Evidence:

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8. As regards the identification of the body, PW-43 Ishwar Singh, the Investigating Officer (IO) stated that on 25th April, 2012 at about at about 12.15 a.m. they noticed on Zipnet that a missing report regarding a lady was registered at PS. K.N. Katju Marg and that the word 'Javed' was common with this case. On contacting the mobile phone of informer given in the said missing report, the informer disclosed his name as Javed resident of Rohini. PW-43 alongwith SI Satvinder went to the house of Javed who on seeing the photographs identified the deceased to be his wife 'Payal' whom he mentioned was missing since the day before. Javed further mentioned that the deceased was his second wife while his first wife was Hamida. Javed further identified the body at the mortuary at AIIMS as that of his wife 'Payal'. PW-43 further stated that when he reached the spot the lower portion of the body was naked and on a minute inspection of the body, he found it bleeding through the nose and ears and a bunch of hairs were stuck on it. The death was therefore clearly homicidal in nature.

9. PW-10, the doctor who conducted *post mortem* on the body of the deceased at AIIMS, *vide* his report Ex. PW-10/A testified that in addition to the following injuries found on the body which were all *ante mortem* in nature, he had found labia contused on the examination of the genital organs and whitish liquid material present in the vagina and uterine cavity, the uterus was in non menstrual phase and the findings were suggestive of sexual assault.

1. One contusion of size 3X2 c.m. over right middle back. It is 32.0 c.m. from right shoulder and 118 c.m. from the right heel.



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2. One contusion of size 3.5X2 c.m. is present over right upper middle back 14.0 c.m. from right shoulder and 144.0 c.m. from right heel.
3. One laceration of size 1X0.2 c.m. is present over left side of the upper lip.
4. Three contusion of size 3X2.5 c.m. (abraded contusion) 3X2 c.m. and 3.5X2.5 c.m. are present over right side middle part and left side of the forehead respectively.
5. Multiple contusions and abrasions of variable sizes are present over anterior aspect of the neck. Multiple petechial over upper part and lower part of the neck. A dissection superficial and deep extravassation of blood is present thyroid complex carotids and jugulars are intact. Neck lymph nodes and salivary glands are congested.
6. A contusion of size 3X2 c.m. is present over dorsum of left hand.
7. One contusion of size 2.5 X 2 c.m. is present over middle part of the chest.
8. Multiple scratch abrasions of variable sizes are present over right side of iliac fossa.
9. An abrasion of size 4.2X2 c.m. is present over right knee.
10. One abrasion of size 2.5X1 c.m. is present over left knee.
11. One contusion of size 2X1 c.m. is present over upper part of front of left leg.
12. Both lips are contused upper and lower gums also seen contused.
13. Three scratch abrasions are present over the dorsum of nose. Dorsum of nose is also seen contused.
14. An abraded contusion of size 3X1 c.m. is present over left side of the chin.



15.A contusion of size 2X1.5 c.m. is present over left side of cheek over the part adjacent to the nose.

16.Scratch abrasions and contusions are seen over the front aspect of the chin.

17.An abrasion of size 3X2.5 c.m. is present over left side of upper part of abdominal wall

18.An abrasion of size 2X0.5 c.m. is present over back side of right forearm and is cres centric in shape. No other external injuries were seen.

10. On the basis of this report, PW-10 opined that the cause of death was asphyxia due to combined effect of *ante mortem* smothering and throttling which were sufficient to cause death in ordinary course of nature individually as well as collectively. The viscera sample was also examined and its report (Ex. PW-36/A) did not detect any evidence of alcohol, intoxicants or chemicals. As per the MLC the victim was brought with injury marks on face and neck, unconscious and unresponsive and *rigor mortis* had set in.

11. PW-15, the scientist from the Department of Forensic Medicine and Toxicology, AIIMS, New Delhi testified that she had isolated the DNA from all the exhibits, in particular from uterine swab, the vaginal swab and anal swab and compared it with fresh blood samples of the appellants. PW-15's report (Ex. PW-15/C) states that the DNA profile from fresh blood samples of both the appellants were found in all the three swabs of the victim. PW-32, the Scientific Officer from CFSL, Lodhi Road carried out biological examination of the exhibits received. His report Ex. PW-32/A found that DNA profile generated from the victim's top and underclothes were consistent with DNA profile of the



deceased. Further, it was found that the DNA profile generated from strands of black hair from the body of the victim were human male in origin and consistent with DNA profile of appellant Pardeep. Blood was also detected from clothes and underclothes of the victim.

12. PW-8, the jeweller testified that in the year 2012 a lady named Payal had come to his shop to purchase three pairs of small gold ear rings worth Rs. 2500/- but she had paid only Rs. 2000/- and for the balance of Rs. 500/-, he had withheld one piece of the 6 rings. He handed over the one ring, which he had withheld, to the police which was seized and examined for a match with rings which had been seized from the appellants. The FSL report (Ex. PW-33/A) found that on an examination through density determination, atomic absorption, spectrophotometer and other measuring tools they were similar in respect of design, pattern of closing, size, weight and metal.

13. PW-43, the Investigating Officer, gave a detailed testimony on the circumstances of arrests of the appellants on 14th May, 2012 upon receiving information from SOS, Crime Branch. Both the appellants were arrested *vide* arrest memo Ex. PW-21/A and Ex. PW-21/B and gave disclosure statements Ex. PW-21/C and Ex. PW-21/D. As per their disclosures, they first took the police to Eros Tower. Nehru Place to the roadside bushes on the road from Kalkaji temple towards Satyam Cinema, Nehru Place and got recovered one pair of black slippers and one small black purse. Appellant Sikander had disclosed that he had thrown the black slippers and the black purse belonging to the deceased at the said place after throwing the dead body from the car. The appellants then pointed out the place near Metro Pillar No. 127 on the road coming from Kalkaji Temple towards Satyam Cinema, Nehru place



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where they had thrown the dead body. They further pointed out towards the place near roundabout adjacent to Nehru Stadium where they had allegedly raped the deceased in their car and also pointed out a place near roundabout of Defence Colony from where they had picked up the deceased. On the basis of the disclosure of the accused Pardeep, the police team went to his house at village Takat Garh, PS Noor Pur Bedi, District Ropar, Punjab and got recovered two small rings (one ring and one small ear ring) which were duly seized. The car bearing registration No. PB01-9551 make Tata Indigo Car white colour was seized by the Crime Branch. The TIP of the recovered case property was conducted (EX. PW-24/B) where the husband of the deceased, Javed, husband of the deceased, identified the purse and slippers as that belonging to his deceased wife and also confirmed it during his testimony before the Trial Court.

14. Circumstances relating to investigation which commenced at the place of incident, the identification of victim by Javed and the arrests of the appellants and their disclosures were deposed by PW-29 SI Satvinder who corroborated the version of PW-43. The seizures at Ropar, Punjab at appellant Pardeep's house on 16th May, 2012 is corroborated by the deposition of PW-5, HC Jarnail Singh from PS Noor Pur Bedi. The circumstances regarding the apprehending of the appellants have been fully corroborated by PW-37 Insp. Devender from Crime Branch, New Delhi who based upon a secret information that the accused in the said case were in Moti Bagh, passed on the information to senior officers. Pursuant to directions, he along with HC Jasvidner, HC Sushil, HC Raja Ram, HC Suresh and other team members proceeded to the place at about 4:15 p.m. on 13th May, 2012 and apprehended appellant Pardeep, from the service road behind bus stand Moti Bagh and at his instance,



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were taken to the house of appellant Sikander at third floor, Village Mochi Bagh, Nanak Pura where appellant Sikander was apprehended as well. They were accordingly produced in the court by I.O. PW-43.

15. PW-2, PW-6 and PW-42 were examined from the companies Vodafone and Bharti Airtel regarding the call records and the relevant cell sites. Post an analysis of the call records it was found that the deceased had a conversation with Javed at 21:42:12 hours on 23rd April, 2012 and her location was at Defence Colony Market, A Block. The call then terminated at Lodhi Institutional Area. There was no call on the mobile of the deceased till 23:14:47 hours when as per an SMS received the location was at Greater Kailash. Thereafter, location of the mobile was at Lajpat Nagar where it remained till midnight. Post midnight, the location was within the vicinity of Satya Niketan, Nanak Pura and terminated at Shanti Niketan, Moti Bagh. The CDRs show that PW-24 Javed and PW-11 Hamida had tried to contact the deceased multiple times on her mobile number. The call records for the deceased mobile number. (9971668438) would show that post the last call received at 21:42:12 hours on 23rd April, 2012 there were messages received at various points of time from 23:14:47 hours till 23:28:28 hours. Further there was an incoming call from Javed at 23:28:50 hours followed by messages from (*inter alia* Javed and Hamida) from 23:29:04 hours till 00:01:34 hours on 24th April, 2012 thereafter the call records corroborate the testimony of PW-11 Hamida who stated that around midnight when she had tried to ring the deceased some person picked up the mobile phone and then disconnected. Yet again on PW-11's calling, the phone was picked up and then disconnected. An analysis of the call records and the location charts is also set-out in the judgment of the learned Trial



Court in Para 64. At all relevant times, the locations of the mobile phones of the appellants were at the same places as that of deceased.

Analysis:

16. Pursuant to a meticulous examination of the evidence on record and appreciation of contentions of the parties, this Court is of the view that the prosecution has proved the guilt of the appellants beyond reasonable doubt. All critical aspects, chain of circumstantial evidence are aligned, consistent and cogent pointing out the guilt of the appellants for rape and murder by strangulation of the deceased. Perusal of the evidence, particularly the testimony of PW-43 and other members of the police team who reached the place of incident as to the condition of the deceased and the subsequent comprehensive scientific analysis including the *post mortem*, the DNA profile, blood examination, biological examination and the viscera report would show that the appellants brutally raped the deceased in their car having picked her from the Defence Colony market and after strangulating her dumped her body on the road near the bushes on the roadside leading from Kalkaji temple to Satyam Cinema, Nehru Place Metro flyover adjacent to Metro Pillar No. 127. Thus this court finds no error in the impugned judgment dated 6th May, 2017 convicting the appellants for offences punishable under Sections 302/201/34/376(2)(g) IPC.

17. From the nature of injuries as report in the *post mortem* report (*supra*) it is evident that the deceased put up a brave resistance before the two appellants who overpowered her physically, caused grievous injuries on her body, raped and eventually strangulated her. Thereafter they attempted to erase the evidence by dumping the body on the roadside and extracted her belongings and put them in different



locations. Considering the brutality of the act right in heart of Delhi which is usually patrolled by police shows the depraved evil mentality of the appellants, who acted with complete impunity with no fear of either the life or consequence of their act and dignity of the deceased victim.

18. The learned Trial Court in its order on sentence considering the depraved and heinous nature of the crime has sentenced the appellants for life imprisonment for the offence punishable under Section 302/34 IPC along with other sentences for offences punishable under Section 376 (2)(g) IPC and Section 120 IPC besides fines imposed for all the offences.

19. However, as per the decision of constitution bench of the Hon'ble Supreme Court in ***Union Of India v. V. Sriharan*** (2016) 7 SCC 1, while examining an issue "*whether a special category of sentence instead of death for a term exceeding 14 years can be made by putting that category beyond grant of remission*" held that it is only the Division Bench of the High Court which derives power under the Penal Code to prescribe an alternate punishment with one either for the entirety of the convicts' life or for a specific period of more than 14 years depending upon the gravity of the crime. Therefore, the learned Trial Court's direction awarding the sentence of life imprisonment of not less than 20 years, would therefore be erroneous and beyond its jurisdictional power under the Penal Code. For ease of reference, the relevant paragraphs of the judgment of the Hon'ble Supreme Court while deliberating upon the issue as to whether imprisonment for life means for rest of one's life with any right to claim revision and whether a special category of sentence, instead of death, for a term exceeding 14 years, putting that



category beyond application of revision can be imposed are extracted as under:

“103. In fact, while saying so we must also point out that such exercise of power in imposition of death penalty or life imprisonment by the Sessions Judge will get the scrutiny by the Division Bench of the High Court mandatorily when the penalty is death and invariably even in respect of life imprisonment gets scrutinized by Division Bench by virtue of the appeal remedy provided in the Criminal Procedure Code. Therefore, our conclusion as stated above can be reinforced by stating that the punishment part of such specified offences are always examined at least once after the Sessions Courts’ verdict by the High Court and that too by a Division Bench consisting of two Hon’ble Judges.

104. That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial court and confirmed by the Division Bench of the High Court, convict concerned will get an opportunity to get such verdict tested by filing further appeal by way of special leave to this Court. By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert that after initial finding of guilt of such specified grave offences and imposition of penalty either death or life imprisonment, when comes under the scrutiny of the Division Bench of the High Court, it is only the High Court which derives the power under the Penal code, which prescribes capital and alternate punishment, to alter said punishment with one either for the entirety of the convict’s life or for any specific period of more than 14 years, say 20,30 or so on depending upon the gravity of the crime committed and the exercise of judicial conscience befitting such offence found proved to have been committed.

105. We, therefore, reiterate that the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such



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specified offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other court in this country. To put it differently, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior court."

20. Notwithstanding the fact that the learned Trial Court did not have the power or jurisdiction to grant life sentence of more than 14 years, this Court having appreciated the facts and circumstances of this case, is of the view that the gravity and the depravity of the crime committed by the appellants was of a serious nature and therefore this Court issued notice to the said appellants and directed production in Court to show cause as to why their sentence should not be fixed for a period of more than 14 years. Having considered their submissions in person and through counsel on the issue of sentence, this Court, in exercise of jurisdiction conferred and clarified by the Hon'ble Supreme Court in *Sriharan (supra)*, sentences the appellants for life imprisonment of not less than twenty years without remission for offence punishable under Section 302/34 IPC taking into account the gravity of the crime and in exercise of judicial conscience befitting such offence.

21. It is apposite to remember and echo the observations of the Hon'ble Supreme Court in the case of **Mukesh v. State (NCT of Delhi)**, (2017) 6 SCC 1: *"The incident of gang rape on the night of 16th December, 2012 in the capital sparked public protest not only in Delhi but nationwide. We live in a civilised society where law and order is supreme and the citizens enjoy inviolable fundamental human rights. But when the incident of gang rape like the present one surfaces, it causes*



ripples in the conscience of society and serious doubts are raised as to whether we really live in a civilised society and whether both men and women feel the same sense of liberty and freedom which they should have felt in the ordinary course of a civilised society, driven by Rule of Law. Certainly, whenever such grave violations of human dignity come to fore, an unknown sense of insecurity and helplessness grabs the entire society, women in particular, and the only succour people look for, is the State to take command of the situation and remedy it effectively.”

Conclusion:

22. In view of the above analysis and discussion, this Court is of the considered view that the prosecution has been able to prove its case beyond reasonable doubt and the impugned judgment on conviction by the learned Trial Court is duly upheld. The order on sentence by the learned Trial Court is modified to the extent that life sentence for the offence punishable under Section 302/34 IPC will be for rigorous imprisonment for life not less than 20 years without remission. The rest of the sentence for offence punishable under Section 376(2)(g) IPC and 201 IPC shall remain the same as awarded by the Learned Trial Court. The appeal is accordingly disposed of as per directions stated above.

23. Copy of this judgment be uploaded on website and be also sent to Superintendent, Tihar Jail for intimation to the appellants and updation of records.

(ANISH DAYAL)
JUDGE

(MUKTA GUPTA)
JUDGE

SEPTEMBER 01, 2022/sm