

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

% Reserved on: 15th February, 2023
Decided on: 24th May, 2023

+ **CRL.A. 1108/2019**

SHIVAM SINGH @ NANHE Appellant
 Represented by: Mr. Biswajit Kumar Patra, Advocate
 (through video conferencing).

versus

STATE Respondent
 Represented by: Ms. Shubhi Gupta, APP for State,
 with Insp. Sachin Kumar and SI Sunil
 Verma, PS Govind Puri.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA

MUKTA GUPTA, J.

1. By this appeal, the appellant challenges the judgment of learned Trial Court dated 27th May, 2019 whereby the appellant was convicted for murder of his wife Arti (“deceased”); and also the order on sentence dated 4th June, 2019 whereby the appellant was directed to undergo rigorous imprisonment for life along with fine of ₹1,000/- in default whereof, simple imprisonment for one month for offence punishable under Section 302 of the Indian Penal Code, 1860 (“IPC”).

2. Brief facts of the case are that on 17th April, 2015 at about 9.00 AM, Geeta Devi (PW-1), who was the mother of the deceased, went to meet her daughter/deceased, who was residing with the appellant in a rented room at H.No. RZ-311/B, Gali No.20, Tughalakabad Extn. When she reached the said room, she could not find her daughter on which she sought help of the

landlord Rohit Kumar Sharma (PW-3) of the house to find her daughter/deceased. The room was thereafter, opened with the spare key, and inside the room, her daughter/deceased was found lying dead, her body covered with a bed sheet and foul smell coming inside the room. Thereafter, PW-3 made a call to the police at number 100 and the information was recorded vide DD No. 6A, on which SI Rishi (PW-12) along with Ct.Munesh (PW-10) reached the spot. Crime team as well as the SDM of the area were called at the spot. Tehsildar Ajit Chaudhary reached the spot. The dead body was sent to the mortuary at AIIMS. SI Rishi took Geeta Devi and Shyam Singh, parents of the deceased, to the office of Shri Ajit Chaudhary where statement of Geeta Devi (Ex.PW-1/A) was recorded. Thereafter, *rukka* (Ex.PW-12/A) was prepared by SI Rishi on which FIR No.525/2015 dated 17th April, 2015, under Sections 498A/304B IPC at PS Govind Puri was registered (Ex.PW-2/A). In the meanwhile, IO/Insp. Sunil Kumar (PW-19) had also reached the spot and had seized the article from the room (Ex.PW-12/D). The dead body was sent for post-mortem examination on 18th April, 2015, and the appellant could not be found anywhere in Delhi. It was later found that the appellant was a resident of Bareilly, and thereafter, a team of police officials led by SI Abhishek was sent to Bareilly, who arrested the appellant on 24th April, 2015 (Ex.PW-7/A) and brought him to Delhi. Disclosure statement of the appellant was also recorded (Ex.PW-12/G). And after completion of investigation, charge-sheet was filed and the appellant was charged for offences punishable under Section 302 and 498A IPC. And to prove its case, the prosecution examined 20 witnesses.

3. Dr. Abhishek Yadav (PW-11) conducted the post-mortem examination on the dead body of the deceased on 18th April, 2015 and

tendered his report (Ex.PW-11/A) and opined “*on dissection of neck, greater cornu of hyoid on the right side is fractured, associated with hematoma. Hematoma is also present along the carotid sheath of the right side at the level of hyoid cartilage. Neck musculature is intact.*” He further opined “*Uterus enlarged. Male fetus of length 19 cm (about 4 month gestational age) is present.*” Further, time since death as opined to be about two days and it was clarified during his examination-in-chief that “*internal neck findings in postmortem report were suggestive of compression of neck due to strangulation*”.

4. Learned counsel for the appellant assails the impugned judgment on the ground that the prosecution has failed to prove motive to constitute the offence which plays an important role in cases of circumstantial evidence and in the absence of which the appellant deserves to be acquitted. It was contended by learned counsel that in cases under Section 302 IPC, conviction cannot be based solely upon the basis of ‘last seen’ theory, and reliance was placed on the decision in 2003 SCC OnLine SC 32 Jabir & Ors. vs. State of Uttarakhand. It was further contended on behalf of the appellant that the tower location details as relied upon by the prosecution, reveal that the mobile allegedly used by the appellant was at Tughlakabad area between 10th April, 2015 to 15th April, 2015 and it does not indicate the location of the alleged mobile phone from 16th April, 2015, whereas post-mortem report dated 18th April, 2015 opined that the possible time of death is two days prior. Even otherwise, there is nothing on record which shows that the alleged mobile was in fact recovered from the appellant during his arrest. It was also pointed out that it was not the case of the prosecution that when the appellant went to the house of his in-laws alongwith his

wife/deceased, there were any differences between the couple. Learned counsel for the appellant further contended that burden of proof to prove the chain of circumstances is on the prosecution and the same cannot be shifted on the accused with the aid of Section 106 of the Indian Evidence Act, 1872 and in this regard, reliance was placed on the decisions in 1956 SCR 199 Shambu Nath Mehra vs. State of Ajmer and 2020 SCC OnLine SC 183 Satye Singh and Anr. vs. State of Uttarakhand. It was further contended that an accused cannot be convicted merely on the ground of suspicion irrespective of how strong it is and reliance was placed on the decision in 2020 SCC OnLine SC 1007 Ram Niwas vs. State of Haryana. It was also contended that whenever two views of the prosecution version are probable, the one in favour of the accused should be accepted as held in (2006) 12 SCC 306 Vikramjit Singh vs. State of Punjab. In view of these aforesaid contentions, it was pleaded that the impugned judgment and order on sentence be set aside and the appellant be acquitted.

5. On the other hand, learned APP for the State submitted that the impugned judgment and order on sentence passed by the learned Trial Court is based on proper appreciation of facts and evidences and thus be upheld and the present appeal be dismissed. To buttress the contentions, learned APP relied upon the following facts:

- (i) The appellant was last seen with the deceased as deposed by Geeta Devi (PW-1) and Rohit Kumar (PW-3). As per PW-1, the deceased and the appellant had both come to meet her at her house on 15th April, 2015 at about 5:00 PM. After which, when she went to the house of the appellant, she found her daughter/deceased dead inside the room with room locked from

outside. PW-3 also deposed that on 15th April, 2015, both the deceased and the appellant came to their room at about 10:30 PM after which he had locked the main gate and on 16th April, 2015 at about 7:00 AM, the appellant met him at the ground floor after which he went towards Tara Apartments. PW-3 further deposed that on 17th April, 2015, at about 9:00 AM, PW-1 met him and gave him the extra key of the room of the appellant, after opening which dead body of the deceased was found lying.

- (ii) Both PW-1 and PW-3 deposed that the appellant and the deceased were living in a room on the second floor at the house belonging to PW-3.
- (iii) From the analysis of the CDR and the cell ID chart of the mobile phone of the appellant 8510998452, it was found that the appellant was in the area of his rented accommodation i.e. Tughlakabad Extn. and after the incident, his location was in the area of U.P. from where he was apprehended by the police.
- (iv) PW-7, PW-9 and PW-20 proved the arrest of the appellant from near NH-24, Dhanoti Railway Crossing on 24th April, 2015 at about 5:00 PM.
- (v) As per the post-mortem report (Ex. PW-11/A) and subsequent opinion (Ex. PW-11/B), it was found that the death of the deceased took place around 4:00-5:00 AM on 16th April, 2015 and that the death of the deceased occurred due to compression of neck which could be due to strangulation.

6. Having heard both the parties at length and perusing the record, the following evidence emerges.

7. Geeta Devi (PW-1) deposed that her daughter was married to the appellant who used to beat and abuse her as he was unemployed. She further stated that the appellant visited her house twice and demanded ₹50,000/- from her and she gave him ₹5,000/- on both the occasions. On 8th April, 2015, her daughter along with appellant came to her house and informed her that the appellant would work in Delhi and on 10th April, 2015 she arranged a room on rent at Gali No.20, Tughlakabad Extn. The appellant informed her that he would do the business of making 'burf ka gola', for which she arranged a machine and gave it to the appellant. On 15th April, 2015, the appellant put a *rehri* and started selling ice-balls in the area. On that day, her daughter/deceased came to her house to meet her and at about 5:00 PM, the appellant also came to her house after finishing his work and after some time, both the appellant and the deceased left for their room. On 16th April, 2015, as her daughter/deceased and the appellant did not come to her house, she went to their rented accommodation at about 9:00 AM and found the room locked after which she came back and informed her husband about the same. She continued to ring the mobile phone of her daughter, but could not connect with her. On the next day, she was having a second key of the room of her daughter and called the owner of the house from upstairs, who himself did not know anything about her daughter. She gave the key to that person and on opening the room, her daughter was found lying dead in the room and covered with the bed-sheet with the foul smell coming from the room. The landlord immediately closed the room, took her down and called the police. One SDM also came at the spot. She stated that she was taken to

an office near Batra Hospital where her statement given to the SDM was recorded (Ex. PW-1/A). In her cross-examination, she stated that when her daughter stayed with her for two days on her arrival on 8th April, 2015, she realized that there was some dispute between the appellant and the deceased as she found her *mangalsutra* broken and her vermillion removed, and on inquiry, her daughter/deceased told her that it was done by the accused. She also stated that her daughter once complained to her that the appellant used to doubt her character. She further stated that on 16th April, 2015, the appellant did not come to her house to take the colour for pouring on the ice-balls which were lying at her house in several bottles and for this reason, she went to the house of her daughter. She also stated that her daughter/deceased had given her one key of the lock of her house, in case she lost her original key.

8. Rohit Kumar Sharma (PW-3) deposed that he had given one room on the second floor to the appellant and his wife/deceased for rent of ₹1,000/-. On 15th April, 2015, the appellant and his wife/deceased came to their room at about 10:30 PM, after which, he had locked the main gate of the building. On 16th April, 2015, when he opened the main gate of his building at about 7:00 AM, the appellant came out of his room and met him at the ground floor. He told the appellant to not park his *rehri* near the house, but the appellant did not reply anything and started walking towards Tara Apartments. He further stated that when he came back, he found the room of the appellant locked. On that day, Geeta Devi who, was the mother of the deceased, came to his house to inquire about the deceased and the appellant twice/thrice but found the room locked. On the next day i.e. 17th April, 2015 at about 9:00 AM, Geeta Devi again came to his house and told him that she

was trying to contact her daughter but could not connect with her and thus, she wanted to open the room to check if the appellant and the deceased had taken away the articles from the room or not. He opened the lock of the room from the key given by Geeta Devi and after opening the door, foul smell was coming from the room and a body was lying on the floor covered with the bed-sheet. Geeta Devi shouted that her daughter is killed after which she started crying, went down and he closed the room. Thereafter, he made a call to police at number 100.

9. SI Rishi (PW-12) deposed that on receipt of call DD No.6A, he along with Ct. Munesh reached the spot at about 10.15 AM where he met Geeta Devi and owner of the house Rohit along with some other public persons. Dead body of a female was found which was in semi decomposed condition. Crime Team and SDM of the area were called at the spot and the body was shifted to AIIMS Hospital. He took Geeta and Shyam Singh to the office of Executive Magistrate where their statements were recorded. He prepared the *rukka* on which FIR was got registered and thereafter, the investigation was handed over to Insp. Sunil.

10. Insp. Sunil Kumar (PW-19) corroborated the version of PW-12 and deposed that he seized the clothes by which the dead body was covered and worn by the deceased i.e. a shawl, bed sheet, nighty, panty, dupatta etc. were also seized (Ex.PW-12/D). From the spot, one lock and key of the room was also recovered, seized and sealed vide memo Ex.PW-12/C. He prepared the site plan (Ex.PW-2/B). Post-mortem on the dead body was conducted on 18th April, 2015 and after which, the dead body was handed over to the relatives of the deceased. The appellant could not be arrested despite search at various places in Delhi. Thereafter, it was found that the

appellant was a resident of Bareilly, UP, from where he was ultimately arrested by a team led by SI Abhishek on 24th April, 2015. SI Abhishek brought the appellant to the police station, where his disclosure statement (Ex.PW-12/G) was recorded. He obtained the CDRs of the mobile phone of Shivam Singh @ Nanhe and on analysis of the CDR, the appellant's location on 15th April, 2015 was found to be at Tughlakabad Extn. and on 16th April, 2015 his location was found to be at Kashmere Gate and thereafter, in areas of UP. After completion of investigation, he filed the chargesheet.

11. SI Abhishek (PW-20) deposed that on 17th April, 2015, on instructions of Insp. Sunil Sharma, he went to the Bareilly UP along with Ct. Chhote Lal and Ct. Rajesh and reached PS Faridpur and PS Bhamora on 18th April, 2015 and searched for the appellant with the help of local police, but could not find him. After search at various places between 18th April-23rd April, 2015, the appellant could not be found, but on 24th April, 2015, he went to NH-24, near Dhanoti Railway crossing around 5.00 PM, where a person was crossing the railway crossing and was limping. He deposed that he had an information that the appellant cannot walk properly and used to limp and that they also had photograph of the appellant from the CAF of the mobile phone of the appellant. On suspicion, they apprehended that person, who disclosed his name to be Shivam @ Nanhe, and thereafter, he was arrested vide arrest memo (Ex.PW-7/A) and brought to PS Govindpuri.

12. In his statement under Section 313 of the Code of Criminal Procedure, 1973 ("Cr.P.C."), the appellant denied his presence at H.No. RZ-311/B, Gali No.20, Tughlakabad Extn. He denied having demanded any money from the family of the deceased. He stated that he was happily

married to the deceased, but denied having known the cause of death of her wife/deceased. He denied having known Rohit Sharma and also denied that he and his wife/deceased were tenants at the house of Rohit Sharma. He further stated that mobile No. 8510998452 belonged to the deceased and was neither used by him, nor recovered from him. He stated that he was innocent and was falsely implicated in the present case and there was no dispute between him and the deceased.

13. As noted from the evidence of the prosecution, the prosecution has proved that the cause of death of the deceased was strangulation and thus, a homicidal death. Besides the deceased was also having a fetus of four months old. From the evidence of the mother of the deceased it is evident that after the marriage of her daughter the appellant used to demand money and appellant used to beat the deceased as he was unemployed. On 8th April, 2015 her daughter and the appellant came to her house and it was informed that the appellant would work at Delhi whereafter she got them a room on rent and on 15th April, 2015 the appellant put a *rehri* and started selling ice-balls in the area. The room was taken on rent on 15th April, 2015 when PW-3, the landlord saw the appellant and the deceased coming to the room at 10.30 PM whereafter he locked the main gate of the building. In the morning of 16th April, 2015 when he opened the main gate at about 7.00 AM, the appellant came out of the room and met him, when he asked him not to park the *rehri* near the house, however, the appellant did not reply and went away. Later at 9.00 AM on 16th April, 2015 when the mother of the deceased came, she found the door locked and she continued trying to contact the deceased however, was unsuccessful. Later, on the next date i.e. 17th April, 2015 she came with the second key and with the help of the

landlord opened the door of the room and they both found the deceased dead. The time since death was two days and thus, the death was caused at the night when the appellant and the deceased were alone in the room, which has been proved beyond reasonable doubt by the prosecution.

14. The main argument on behalf of the appellant is that no onus under Section 106 of the Evidence Act can be put on the appellant and it is the duty of the prosecution to prove the case beyond reasonable doubt. This argument of the appellant ignores the fundamental principle that onus under Section 106 of the Evidence Act shifts to the accused to explain the facts specially in his knowledge after the prosecution proves the foundational facts as held in 2022 SCC OnLine SC 673 Sabitri Samantaray vs. State of Odisha and Bidyadhar Praharaj Vs. State of Odisha. It was held:

“18. Section 106 of the Evidence Act postulates that the burden of proving things which are within the special knowledge of an individual is on that individual. Although the Section in no way exonerates the prosecution from discharging its burden of proof beyond reasonable doubt, it merely prescribes that when an individual has done an act, with an intention other than that which the circumstances indicate, the onus of proving that specific intention falls onto the individual and not on the prosecution. If the accused had a different intention than the facts are specially within his knowledge which he must prove.

19. Thus, although Section 106 is in no way aimed at relieving the prosecution from its burden to establish the guilt of an accused, it applies to cases where chain of events has been successfully established by the prosecution, from which a reasonable inference is made out against the accused. Moreover, in a case based on circumstantial evidence, whenever an incriminating question is posed to the accused and he or she either evades response, or offers a

response which is not true, then such a response in itself becomes an additional link in the chain of events.

15. Further dealing with Section 106 Evidence Act, Hon'ble Supreme Court in the decision reported as (2006) 10 SCC 681 Trimukh Maroti Kirkan held as under:

“22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In Nika Ram v. State of H.P. [(1972) 2 SCC 80:1972 SCC (Cri) 635: AIR 1972 SC 2077] it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with “khukhri” and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In Ganeshlal v. State of Maharashtra [(1992) 3 SCC 106: 1993 SCC (Cri) 435] the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 CrPC. The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In State of U.P. v. Dr. Ravindra Prakash Mittal [(1992) 3 SCC 300:1992 SCC (Cri) 642: AIR 1992 SC 2045] the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that the wife had committed

suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC. In State of T.N. v. Rajendran [(1999) 8 SCC 679: 2000 SCC (Cri) 40] the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime”.

[Emphasis supplied]

16. From the cogent and convincing evidence of the two witnesses, i.e. PW-1 and PW-3 and the post-mortem report, the prosecution having proved the foundational facts, the onus shifted on the appellant to explain how the deceased died while she was in company of the appellant which he miserably failed to discharge.

17. Hence this Court finds no merit in the appeal. Appeal is accordingly dismissed.

18. Judgment be uploaded on the website of this Court and copy of the same be sent to the Superintendent Jail for updation of record and intimation to the appellant.

**(MUKTA GUPTA)
JUDGE**

**(POONAM A. BAMBA)
JUDGE**

MAY 24, 2023/'vn'

