



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on : 05th August, 2022
Pronounced on: 05th September, 2022

CRL. A. 77/2019

NADEEM

..... Appellant

Represented by: Mr. Sudarshan Rajan and Mr.
Hitain Bajaj, Advs.

versus

STATE

....Respondent

Represented by: Mr. Prithu Garg, APP for State
with Insp. Yogesh Kumar, PS
Jama Masjid.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. The appellant has assailed the impugned judgment dated 10th September, 2018 passed by the learned Trial Court convicting the appellant for offence punishable under Section 302 IPC and order on sentence dated 19th September, 2018 sentencing the appellant for life for offence punishable under Section 302 IPC and a fine of Rs.10,000/- (simple imprisonment for three months in default of payment of fine).

The Incident:

2. As per the case of the prosecution on the intervening night of 10th- 11th April, 2012 at about 2:00 a.m., the appellant committed the murder of his wife Shabana at House no.1166, Sarai Mahal, Churiwalan, Delhi-



06 by thrusting a screw driver in her head. According to the prosecution, a call was made to the Control Room, Police Headquarters at about 2:03:35 a.m. on 11th April, 2012 by PW-6 Abrar Mirza from his mobile. The said information was recorded in PCR form Ex.PW-26/A by W/Constable Pooja PW-26. The deceased was removed to the hospital by the PCR van where she was declared brought dead. The investigation was assigned to PW-11 SI Md. Faiyaz who alongwith police officers PW-27 and PW-24, reached the spot and found one eye witness PW-3 Ballu Qureshi present. As per the prosecution, the said eye witness informed that the appellant had murdered the deceased and on the basis of the statement of PW-3, *Rukka* was prepared and thereafter the investigation was entrusted to PW-36 Inspector I.K. Jha. After completion of the investigation, charge-sheet was filed, cognizance of offence was taken and charge was framed against the appellant for offence punishable under Section 302 IPC. The appellant pleaded not guilty and claimed trial. The prosecution examined 36 witnesses in support of the case, the statement of the appellant was recorded under Section 313 Cr.P.C. and the appellant led the evidence of one witness in defence.

Submissions by Appellant:

3. The appellant through his appeal and arguments on his behalf by counsel submitted that both public witnesses PW-3 and PW-6 had turned hostile and therefore it was not a case of direct eye witness testimony being available and could only be proved on circumstantial evidence. However, even on circumstantial evidence, there was no last seen evidence, no recovery and no chance prints which ought to implicate the appellant for the crime. Only motive of quarrels between the appellant



and deceased was sought to be proven by prosecution witnesses. The basis of conviction by the learned Trial Court was Section 106 of the Indian Evidence Act which was contrary to law and in support of this the counsel for the appellant relied upon *inter alia Mangu Singh v. Dharmendra and Anr.* (2015) 17 SCC 488, *Reena Hazarika v. State of Assam* (2019) 13 SCC 289, *Md. Yunis Ali Tarafdar v. State of West Bengal* (2020) Vol. 3 SCC 747.

Submissions by the Prosecution:

4. Learned Additional Public Prosecutor on behalf of the prosecution submitted that the appellant was rightly convicted since there was not only medical evidence available but also eye witness testimony, proof of motive and conduct of the appellant prior to the incident and other links in the chain of evidence. Learned APP submitted that the appellant and the deceased cohabited in the same house where the murder took place right till the time of the incident as husband and wife and therefore the burden shifted upon the appellant under Section 106 of the Indian Evidence Act to present an *alibi* or otherwise explain the circumstances against him. The appellant did present an alibi by examining DW-1 who deposed that the appellant was sleeping “*in the home*” between 10:30 p.m. on 10th April, 2012 right up till his arrest at 10:00 a.m. on 11th April, 2012, which is completely falsified by the testimony of the IO PW-36 who deposed that when he went and searched the appellant on 11th April, 2012, he was not found at that house. Motive of the appellant to kill the deceased was fully established by the testimonies of family members of the deceased (*inter alia* PW-5, PW-7, PW-9, PW-10, PW-12, PW-13, PW-20) who had deposed as to the multiple and serious quarrels between the appellant and deceased. PW-7 had also deposed



that the appellant had threatened to kill the deceased 3-4 days before the incident but was not cross-examined by the appellant. PW-12 and PW-20 had deposed that 2 days prior to the incident, the appellant was arrested/apprehended by the police on a complaint made by the deceased after a quarrel. Learned APP further submitted that the medical evidence established that the death was homicidal and could not have been suicidal.

The Evidence:

5. The evidence, which is relevant and necessary for proper appreciation of the contentions of the parties, as gleaned from the record, is as under:

(i) PW-3 Ballu Qureshi was cited as the informant and eye witness who turned hostile. In his deposition he stated that he was residing in Kothri no.3 in Premises no.1166, Sarai Mahal, Churiwalan, Jama Masjid, Delhi-06. As per PW-3 around 2:00 a.m. when he was sleeping in his room, two people came and knocked on his door and mentioned about an incident with Shabana and he therefore accompanied the persons to the house of Shabana, which was some distance from his house. They discovered that Shabana was lying on bed and upper portion of her body was on the bed and legs were touching the floor and she had injury marks on the head near the ear which appeared to be caused by a screw driver. When he rushed outside in a perplexed condition he met one Abrar and asked him to call the police. In his cross-examination by the learned APP he was confronted with his statement given to the police (PW-3/A) from which he was allegedly resiling. He denied that he had stated that when he went to the room of Shabana or that Nadeem was sitting on Shabana on the bed and saying



that he will finish daily quarrel forever. He denied that he had witnessed the appellant murdering the deceased. However he did state that the appellant was residing with the deceased for the last three years.

(ii) PW-6, Abrar Mirza, the informant stated that on 11th April, 2012 at around 2:00 a.m. he was returning from the house of his sister at Chawri Bazar and passing the area at Churiwalan when he saw a gathering of people outside House no.1166. He noticed PW-3 who was raising hue and cry about a lady lying in the said house with a screw driver injury and thereupon he made a call to the PCR. Since he was resiling from his previous statement, the learned APP cross-examined him when he confirmed that it was PW-3 that told him that the deceased had been inflicted an injury by husband (the appellant) with the help of screw driver and he had run away. Later in his cross-examination, he again contradicted himself and denied the fact that he was so informed by PW-3 and he confirmed that he himself had not witnessed the incident.

(iii) PW-5 Saba, the daughter of the deceased, in her testimony confirmed that her mother was residing with the appellant at that Churiwalan address and that the appellant used to meet her mother and demand money from her and had threatened her in the past. PW-5 stated that she was in Meerut at the house of her elder sister Sijra at the time of the murder. PW-13 Sana, the other daughter of the deceased, deposed that after the divorce of her mother with their father Saleem, the deceased had started living with the appellant and she had complained frequently about the appellant being violent with her and threatening her. She stated that she lived in her matrimonial home and got a call from her maternal aunt Rukhsana on 11th April, 2012 at 8:00 a.m. in the morning



that the appellant had committed the murder of her mother. In her cross-examination she further confirmed that about 20 days prior to the incident the appellant had severely quarrelled with the deceased and therefore she had intervened and sent her other two sisters Saba and Sijra to Meerut to their maternal grandmother. PW-10 Sijra, the third daughter of the deceased, also corroborated the testimonies of others on cohabitation and quarreling between the deceased and the appellant. She stated that she stayed at the matrimonial home at Meerut and corroborated the testimony of PW-13, her sister Sana that 20 days prior to the incident after settling the dispute between the mother and the appellant she had gone with her sister Saba to Meerut.

(iv) PW-7 Shakila, the mother of the deceased, testified that the deceased was residing with the appellant (whom she identified) and that he used to quarrel with the deceased, including even 3-4 days prior to the incident and that the appellant was exhorting that he will finish deceased some day. PW-9 Rukhsana, the sister of the deceased, also testified that the deceased used to live with appellant (whom she also identified) and that the appellant used to quarrel and was violent with the deceased.

(v) PW-12 Gulam Mustafa, the father of the deceased, testified that the appellant on the basis of false assurance of marriage exploited his daughter, sexually and financially. He stated that on one occasion on 10th April, 2012 his daughter Shabana (the deceased) had made a complaint to the police that the appellant had beaten her and he identified the complaint shown to him vide a Diary No.31B which was marked as Mark PW-12/A. PW-20 Feroz Khan, the brother of the deceased, testified that about 20 days prior to 11th April, 2012 the appellant had quarrelled with his sister and when he had gone there to



get the matter resolved, the appellant was very furious and said that one day he will kill Shabana.

(vi) PW-21 SI Yashpal Singh testified that on 08th April, 2012 pursuant to a DD No. 38PP when it came to their knowledge that husband of Shabana i.e. Nadeem is abusing, manhandling Shabana and threatening to kill her, he had apprehended the appellant under Section 107/151 Cr.P.C. alongwith Kalandra for threatening Shabana and he was later released on bail on 09th April, 2012. PW-32 ASI Om Pal produced copies of the complaints registered by Shabana against her “husband” (the appellant) on 17th February, 2012, 23rd March, 2012 and 10th April, 2012.

(vii) PW-2 the CMO at LNJP Hospital, Delhi testified that the deceased was in unconscious condition when brought in the hospital and was medically examined vide MLC Ex.PW-2/A, however, was dead when brought to the hospital. PW-4, the doctor who conducted the *post mortem* testified that screw driver was found embedded in the cranial cavity of the deceased which was removed and sealed and had caused stab wound of 0.7 cm X 0.7 cm X 8 cm in the right temple region of the forehead besides a bruise 5 cm X 5 cm on front and outer aspect of right side of the chest. He stated that death was caused by cranio cerebral damage consequent upon penetrating trauma to the head, as a result of forceful thrust of a metallic screw driver, which was sufficient to cause death in ordinary course of nature. PW-17 SI Pankaj confirmed that they were not able to lift any fingerprints from the spot including from the glass tumbler which was lying at the place of incident. He further stated that there were grooves in handle of screw driver thus no prints could have been lifted. The other prosecution witnesses were formal



witnesses who corroborated the complaints made by Shabana against the appellant and of the registration of the FIR and PCR calls.

Analysis:

6. From a meticulous examination of the evidence on record and contentions of both the parties, this Court is of the considered view that the prosecution has been able to establish its case of the appellant's guilt beyond reasonable doubt for *inter alia* the following reasons:

(i) It is quite evident from the evidence on record that the death of the deceased was homicidal in nature. The *post mortem* report as duly testified by PW-4 clearly opined that the cause of death was cranio cerebral damage consequent upon penetrating trauma to the head as a result of forceful thrust of a metallic's screw driver (which was found embedded in the cranial cavity when the body was brought for *post mortem*).

(ii) Even though PW-3 Ballu Qureshi was arrayed as an eye witness having stated in his statement given to the police that he had seen Nadeem sitting on Shabana in Shabana's room and witnessed the appellant murdering the deceased, he later resiled from his statement while deposing in court. However, he did admit that the appellant was residing with the deceased for the last three years. Similarly, PW-6 Abrar Mirza, the informant resiled from his earlier statement but in his cross-examination made two contradictory claims, initially he testified that PW-3 had told him that the appellant had inflicted the injury on the deceased with the help of screw driver and ran away but later denied the fact that he was informed as such by PW-3. These witnesses having turned hostile, reliance can only be placed on that part of the testimony



where they admit that the appellant was indeed cohabiting with the deceased.

(iii) On the point of the cohabitation of the appellant with the deceased at the home of the deceased, almost all family members i.e. PW-5 (Saba, the daughter), PW-7 (Shakila, the mother), PW-9 (Rukhsana, the sister), PW-10 (Sijra, the daughter), PW-12 (Gulam Mustafa, the father), PW-13 (Sana, the daughter) and PW-20 (Feroz, the brother), all testified to the fact that the appellant was cohabiting with the deceased at House no.1166, Sarai Mahal, Churiwalan, Delhi-06. PW-5 and PW-10, the daughters of the deceased also testified that they used to reside with the deceased in that house, though they were not present at the time of the incident as they had gone to Meerut 20 days prior to the incident on the intervention of PW-13 the elder daughter pursuant to a quarrel between the appellant and the deceased.

(iv) The issue of cohabitation also gets confirmed from the testimony of PW-32 who produced copies of the complaints registered by the deceased against the appellant on 17th February, 2012, 23rd March, 2012 and 10th April, 2012. A perusal of the copy of the complaint registered exhibited as Ex.PW-32/B would show that on 17th February, 2012 under name and address of the complainant at entry no.50 it is written: “*Shabana Praveen wife of Nadeem Malik resident of 1166, Churiwalan*”, under category of the complaint it is written “*family dispute*” and under gist of complaint it is written “*complaint against the husband*”. Similarly, the complaint registered on 23rd March, 2012 shows Shabana Praveen as the complainant with the same address and under gist of complaint is written “*complaint against Nadeem Malik*”. The third complaint of 10th April, 2012 at sl. no.243 of the complaint



register under gist of complaint is written “*complaint against her husband Nadeem*”.

(v) Also relevant on the issue of cohabitation is the testimony of PW-34 SI Md. Inam who stated that on 24th February, 2012 when he was on emergency duty at night, the duty officer informed him regarding a quarrel at 1166 Churiwalan where “*one Shabana Praveen met me and told that her husband Nadeem had beaten her up*”. Subsequently, as per PW-34, a compromise took place between Shabana and the appellant and Shabana also gave a written statement in this regard which was exhibited as Ex.PW-34/A. A perusal of this exhibit would show that the incident of the quarrel has been described by Shabana as with her “*pati*” (husband) and she had described herself as the wife of the appellant residing at 1166, Churiwalan. The factum of the appellant residing with the deceased and being described as the husband of the deceased is quite firmly established by the evidence on record and the consistent testimonies of numerous witnesses.

(vi) Considering that the factum of the cohabitation being substantiated and duly corroborated by the evidence, the burden would shift to the appellant to give a cogent explanation as to how the crime was committed in view of Section 106 of the Indian Evidence Act. Reliance was rightly placed by the prosecution on the decisions of the Hon’ble Supreme Court in *Trimukh Maroti Kirkan v. State of Maharashtra* (2006) 10 SCC 681, *Narendra v. State of Karnataka* (2009) 6 SCC 61, *Rajnit Kumar Haldar v. State of Sikkim* (2019) 7 SCC 684, *Jayantilal Verma v. State of M.P. (Now Chhattisgarh)* (2020) SCC onLine SC 944. Para 15 and 22 of Trimukh Maroti Kirkan (*Supra*) is instructive in this regard and is extracted as under:



15. “Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation”.

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 illtreated 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".

(vii) The appellant however, has been unable to discharge the burden of proving the fact which would be especially within his knowledge considering his cohabitation with the deceased. A plea of alibi was setup by the appellant by leading evidence of DW-1, his younger brother Nafees, to prove on a balance of probability that he was not present with the deceased at the time of the incident on 10th April, 2012. A bare perusal of the testimony of DW-1 which is extracted below for reference would show that it is extremely vague, ambiguous and unclear on the time and date stated as also does not provide any specific details:



“the accused, who is my elder brother, was arrested about 10:00 a.m. on 11th of the 3rd of 4th Month of year 2012 (but I do not remember the exact month) by the police when he was sleeping in the home. My brother had slept on the previous day to the date of his arrest at about 10:30 p.m. and he was remained sleeping till his arrest on the next date”.

(viii) Firstly DW-1 states that the appellant was sleeping “*in the home*” which is highly vague, non-specific and abstract. Secondly even if it is assumed that by ‘*home*’ DW-1 is referring to his own home, then his testimony is completely falsified by that of the IO PW-36 who deposed that on 11th April, 2012 when he went in search of the appellant towards Turkman Gate “*he was not found at this house*”. PW-36 further deposed that thereafter at 12:40 p.m. he again went in search of appellant in that area and upon receiving information through a secret informer present at Turkman Gate, the appellant was apprehended from VIP gate, Ramleela Ground, Turkman Gate at about 5:00 p.m. Therefore, neither the location nor the time of DW-1’s assertion regarding the arrest of the appellant is corroborated and therefore has to be discredited.

(ix) As far as the motive of the appellant to kill the deceased is concerned, it is quite clear and categorical from the testimonies of all family witnesses as well as the previous complaints filed by the appellant against the deceased including just prior to the date of the incident that the appellant had been beating the deceased from time to time during course of arguments and had threatened her as well on various occasions. This fact is fully corroborated by the testimonies of PW-5, 7, 9, 10, 12, 13 and 20 which are absolutely consistent on this issue. The threat of killing the deceased by the appellant was testified too by PW-7 who testified that she had heard the same and she was not



cross-examined on this aspect by the counsel for the appellant before the learned Trial Court. Similarly, PW-13, the daughter Sana had also testified that her mother used to mention about the appellant threatening to kill her and she too was not cross-examined by the counsel for the appellant on this aspect. Further, PW-21 SI Yashpal Singh testified that he had apprehended the appellant on 08th April, 2012 under Section 105/151 Cr.P.C. for threatening Shabana but was later released on bail on 09th April, 2012. The circumstance of motive for the appellant to kill the deceased was also therefore fully established.

Conclusion:

7. In light of the above discussion and analysis, this Court finds that the guilt of the appellant for the murder of the deceased has been proved beyond reasonable doubt and duly supported by circumstantial evidence by the prosecution. Consequently, this Court finds no error in the impugned judgment of conviction and order on sentence by the learned Trial Court.

8. Appeal is accordingly dismissed.

9. Copy of this judgment 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

SEPTEMBER 05, 2022/mk