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**(2020) 01 RAJ CK 0019**

**Rajasthan High Court**

**Case No:** Criminal Appeal No. 1280 Of 2016

Salim Mohammed @  
Rafique

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

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**Date of Decision:** Jan. 16, 2020

**Acts Referred:**

Indian Penal Code, 1860 " Section 201, 302#Code Of Criminal Procedure, 1973 " Section 313, 374(2)#Evidence Act, 1872 " Section 27

**Citation:** (2020) 01 RAJ CK 0019

**Hon'ble Judges:** Sandeep Mehta, J; Abhay Chaturvedi, J

**Bench:** Division Bench

**Advocate:** Deepak Menaria, Anil Joshi

**Final Decision:** Dismissed

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**Judgement**

Offences,"Conviction for offence

under Sections",Fine amount,Default Sentences

Under Section 302 IPC,Life Imprisonment,"Rs.5,000/-","Six Months" Additional  
R.I.

Under Section 201 IPC,3 Years" R.I.,"Rs.2,000/-",One month" R.I.

support the prosecution story. He urged that the evidence led by the prosecution so as to bring home the charges against the appellant is totally,,,

conjectural and unconvincing and does not lead to the unexceptional inference regarding guilt of the accused. Hence, he implored the Court to quash",,,

and set aside the impugned judgment and acquit the accused-appellant.,,,

10. Per contra, learned Public Prosecutor, vehemently and fervently opposed the submissions advanced by the appellant's counsel. He pointed out",,,

that there is ample evidence on the record of the case to establish that the appellant was involved in an extra marital affair with Smt. Lali for the,,,

previous 5 years. In this regard, he drew the Court's attention to the evidence of the first informant Jagdish Chandra (PW-8), brother of the",,,

deceased Smt. Lali, Devi Lal (PW-20) (her husband) and Smt. Paani Devi (PW-27), Ladu (PW-35) and Gopal (PW-36); being the owners of the",,,

houses who had given their respective premises to the appellant on rent. He urged that all these witnesses have duly proved the fact that the appellant,,,

used to live with the deceased Smt. Lali and her child Sonu. They often used to quarrel with each other. Learned Public Prosecutor heavily relied,,,

upon the evidence of Dr. Kailash Chandra (PW-41), who, while being posted as a Senior Specialist Surgery at the MGH, Bhilwara treated Smt. Lali",,,

who had been admitted in burn Unit-A at MGH Bhilwara on 23.06.2010 for the treatment of her burn injuries. After being provided treatment, the",,,

victim was discharged from the hospital on 26.06.2010. Salim Mohammed, posing as her husband took responsibility of the woman and then got her",,,

discharged. Learned Public Prosecutor pointed out that the appellant signed the Bed Head Ticket (Ex.P-72) wherein it is clearly recorded that Lali,,,

and Salim were spouses. These signatures were appended while getting Smt. Lali discharged from the hospital. After Smt. Lali had been discharged,,,

from the hospital neither she nor her child were seen alive. The dead body of the child Sonu was recovered from the well of one Sohan Lal Mohnot,,,

(PW-11) on 03.07.2010 (Ex.P-46) whereas, the dead body of Smt. Lali, who had been strangulated to death, was recovered from the well of Bharat",,,

Singh (Ex.P-1). The bodies were subjected to postmortem and the time of death noted in the postmortem reports coincides with the date on which",,,

Smt. Lali was got discharged from the hospital where she was being treated by Dr. Kailash Chandra (PW-41). He urged that the clothes of the",,,

deceased Smt. Lali were recovered from a mango tree growing in the field of the accused appellant on 07.07.2010 vide Seizure Memo Ex.P-26 acting,,,

in furtherance of the information provided by the accused-appellant to the Investigating Officer under Section 27 of the Evidence Act. He thus, urged" ,,,

that there is ample circumstantial evidence on the record of the case so as to connect the appellant with the offences alleged and hence, the trial Court" ,,,

was perfectly justified in convicting him by the impugned judgment. The incriminating links were thoroughly proved so as to establish the existence of,,,

an unbreached chain of circumstances pointing invariably towards the guilt of the accused. He thus, sought dismissal of the appeal." ,,,

11. We have given our thoughtful consideration to the submissions advanced at Bar and have gone through the impugned judgment and have minutely,,,

reappreciated the evidence available on record.,,,

12. On going through the evidence of the first informant Jagdish (PW-8) being brother of the deceased, it is established beyond all manner of doubt" ,,,

that Smt. Lali was involved in an extramarital live-in relationship with the appellant Salim Mohammed. The evidence of Smt. Panni Devi (PW-27) and,,,

Gopal (PW-36) is natural and convincing. These witnesses stated that the accused stayed on rent in their respective houses for some duration and that,,,

during this period, both used to fight viciously with each other viciously." ,,,

13. Dr. Kailash Chandra (PW-41) being a Senior Surgeon at the MGH Bhilwara duly proved in his evidence that Smt. Lali was brought to the,,,

Emergency Ward of the hospital with burn injuries and was admitted in Unit-A, Bed No.6. She was provided treatment and was discharged on" ,,,

26.06.2010. Her husband noted on the bed head ticket that he was responsible for her well being.,,,

14. We have compared the signatures appended on the Bed Head Ticket (Ex.P-72) with the admitted signatures of the appellant appended on various,,,

other documents available on record and find that all the signatures are absolutely identical. Even the accused-appellant, did not dispute his signatures" ,,,

on the discharge ticket (Ex.P-72) when he was questioned and confronted with the document in his statement under Section 313 Cr.P.C. Thus, it is",,,

duly proved that the accused got the deceased Smt. Lali discharged from the hospital on 26.06.2010 after assuring the hospital staff that he would,,,

ensure her well being.,,,

15. The dead body of the child Sonu (daughter of Smt. Lali) was recovered from the well of Sohan Lal Mohnot on 03.07.2010 by Narendra (PW-38),",,,

SHO, PS Hamirgarh. Krishna Gopal (PW-39) proved the requisite steps of investigation including the recovery of dead body of Smt. Lali from a well",,,

on 06.07.2010 and the recovery of her clothes effected at the instance of the accused-appellant. As per the postmortem report (Ex.P-56) of the child,,,

Sonu, she was suspected to have drowned to death. The time of death was mentioned in the report as 6 to 7 days earlier. The postmortem report was",,,

proved by Dr. Gopal Rajora (PW-22). The dead body of Smt. Lali which recovered by Shyami Lal (PW-40) from the well of Bharat Singh, was",,,

subjected to postmortem at the MGH Bhilwara. Dr. Gyan Maheshwari (PW-23) proved the postmortem report (Ex.P-57) opining that Smt. Lali,,,

expired 7 to 10 days before the postmortem was conducted and that the cause of death was strangulation. Numerous other injuries were noticed on,,,

the dead body of Smt. Lali.,,,

16. Thus, it is amply proved from the cogent and convincing evidence led by the prosecution that the accused-appellant was having an illicit affair with",,,

Smt. Lali and that they lived together in various rented premises. They had a child Sonu aged 3 years. They used to quarrel with each other which fact,,,

was stated by two landlords Smt. Panni Devi (PW-27) and Gopal (PW-36). Smt. Lali was got admitted by the appellant herein to the MGH Bhilwara,,,

burn ward on 23.06.2010 with burn injuries and he got her discharged on 26.06.2010 and thereafter, neither Smt. Lali nor her child Sonu were seen",,,

alive.,,,

17. Ex-facie, I am of the opinion that the allegation of the prosecution that the clothes of deceased Lali were recovered in furtherance of the",,,

information provided by the accused under Section 27 of the Evidence Act is not convincing because it is unbelievable that the accused who had the,,,

opportunity to destroy it, would keep the worthless articles secure so that they could be recovered later. In addition thereto, none of the prosecution",,,

witnesses including Jagdish, brother of the deceased was made to identify the clothes as being of Lali." ,,,

18. In the backdrop of the above factual scenario, we are of the firm opinion that the responsibility of ensuring the well being of Smt. Lali and her child",,,

Sonu was that of the appellant. The appellant did not convey the fact of Smt. Lali and her child Sonu having gone missing either to her relatives nor did,,,

he file any report to the police which gives a strong indication about his guilty mental state. The evidence of Dr. Kailash Chandra (PW-41) and the,,,

bed head ticket (Ex.P-72) signed by the accused-appellant are sufficient to conclude that Smt. Lali was lastly seen alive in the appellant's",,,

company and thereafter, the dead bodies of Smt. Lali and her child Sonu were recovered from different wells." ,,,

19. The death of both the victims was homicidal. The appellant offered no explanation whatsoever when he was questioned under Section 313,,,

Cr.P.C. and when confronted with the circumstances appearing against him in the prosecution evidence. Thus, we are duly satisfied that the",,,

prosecution has proved beyond all manner of doubt, the complete unbreached chain of the incriminating circumstances existing against the accused-" ,,,

appellant which invariably and unexceptionally points towards his guilt and is inconsistent with his innocence or the guilt of anyone else.,,,

20. In wake of the above discussion, we are of the firm opinion that the trial court was perfectly justified in convicting and sentencing the appellant as",,,

above by the impugned judgment dated 18.10.2016 which does not suffer from any illegality or infirmity whatsoever warranting interference.,,,

21. Hence, the instant appeal fails and is hereby dismissed." ,,,

22. Since, the appellant was provided services of a free legal aid counsel and as we have dismissed his appeal, we hereby direct that copy of this",,,

judgment shall be forthwith transmitted to the appellant at the Central Jail, Ajmer. The Rajasthan State Legal Service Authority shall provide",,,

assistance/legal aid to the appellant-convict for filing of further appeal before the Hon'ble Supreme Court, if he so desires." ,,,

23. Record of the trial court be returned forthwith.,,,