

(2018) 07 DEL CK 0242

Delhi High Court

Case No: CRL.A. 1281 OF 2015

Uttam
@APPELLANT@Hash
State

APPELLANT

Vs

RESPONDENT

Date of Decision: July 17, 2018

Acts Referred:

Indian Penal Code 1860 " Section 302#Code of Criminal Procedure 1973 " Section
313#Indian Evidence Act, 1872 " Section 26, 106

Citation: (2018) 07 DEL CK 0242

Hon'ble Judges: S. MURALIDHAR, J; VINOD GOEL, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Dr. S. Muralidhar, J.

1. This appeal is directed against the impugned judgment dated 14th July 2015 passed by the learned Additional Sessions Judge-III, North East,

Karkardooma Courts in SC No.44/13 arising out of FIR No.296/13 registered at Police Station (PS) Gokalpuri convicting the Appellant for the offence

under Section 302 IPC and the order on sentence dated 23rd July 2015 whereby the Appellant was sentenced to imprisonment for life along with fine

of Rs.5,000/- and in default of payment of fine, to undergo simple imprisonment for six months.

The crime

2. The charge framed against the Appellant was that at around 9 am on 9th July 2013, she committed the murder of her husband, Dhanpal (the

deceased), at their place of residence in Johripur by strangulation and caused him injuries and, therefore, committed the offence punishable under

Section 302 IPC.

3. At 11 am on 9th July 2013, DD No.15A was noted at PS Gokalpuri that a murder had taken place at H.No.51, Gali No.1, Pradhan Wali Gali,

Johripur, Delhi. A similar noting was made upon a call being received at about 10.45 am at the PCR. The PCR form (Ex.C-2) also notes that at about

11.38 am, the police officers met Sapna (PW-1) at the spot. She informed them that she was living with her uncle (the deceased) and his wife (the

Appellant) who used to quarrel frequently. She also mentioned that the Appellant had also threatened to kill the deceased during those arguments.

4. The PCR form notes the version of PW-1 that on that morning, Prabhat (DW-1: brother-in-law of the deceased), Sudhir (saadu of the deceased),

Urmila, and Uma (sisters-in-law of the deceased) came to the aforementioned address and locked PW-1 on the first floor of the house. They then

beat up the deceased on the ground floor and ultimately murdered him. It is noted that the body was found at the spot in a bloody condition. Most

notably, the PCR form goes on to note that "Dhanpal ki wife Uttam pahle hi thane chali gye hai jo thane wale bata rahe hai ki Uttam ne bataya hai

ki usne he apne pati ka murder kiya hai".

5. Corresponding to the above noting in the PCR form is DD No.18A (Ex.PW-6/A) which records the fact that at 12.30 pm, the Appellant had

walked into the PS and informed the police that she had murdered her husband at their house at Johripur because of an illicit relationship between the

deceased and PW-1. The said DD No.18A also noted that the Appellant's clothes were bloodstained and that she had been arrested and kept in the

custody of Woman Constable Ajnesh (PW-7) at the PS.

6. The Investigating Officer (Inspector Jaswant Singh (PW-18), was posted as the Anti Terrorist Officer (ATO) at PS Gokalpuri at the

relevant time. He along with the Station House Officer (SHO), Inspector Tilak Chand Bisht, reached the spot after being informed about the

contents of DD No.15A at about 11 am. There he found that Sub-inspector Arvind Kumar (PW-12), Constable Budh Prakash (PW-11) and other

PCR officials were already present. One dead body of a male person was lying in the room on the ground floor. There was a pool of blood around the

dead body. PW-18 noticed three pieces of broken red bangles. The crime team was called there.

Investigation

7. The investigation of the case was assigned to PW-18 who met PW-1 at the scene of the crime and recorded her statement. On that basis the rukka

(Ex.PW-12/I) was drawn up and sent through PW-11 for registration of the FIR. PW-18 then lifted the blood of the deceased in a piece of gauze,

placed it in a plastic container and converted it into a sealed cloth parcel. He also took pieces of the floor, bloodstained earth, control sample of the

earth, and the three broken pieces of red bangles and all of these were seized and converted into sealed parcels.

8. At the PS, the bloodstained clothes of the Appellant, i.e. her white shirt (torn in the front), green salwar, and dupatta were all seized. According to

PW-18, clean clothes were brought from the residence of the Appellant and she changed into them before the bloodstained clothes were removed,

seized and sealed. On 24th July 2013, nine sealed parcels containing exhibits and the sample seal were sent to the Forensic Sciences Laboratory

(FSL), Rohini for analysis. The FSL reports confirmed that the blood on the clothes of the Appellant matched the DNA of the blood of the

deceased.

9. The post-mortem examination of the deceased was done at the GTB Hospital by Dr. Neha Gupta (PW-5). She noticed as many as 28 external

ante-mortem injuries. According to her, injury No.27, which was a ligature injury present around the neck at the level of the thyroid cartilage, was by

itself sufficient to cause death in the ordinary course of nature. The cross-examination of PW-5 did not yield much for the accused. It therefore stood

proved that the death of the deceased was homicidal.

10. During the course of investigation, on 22nd August 2013, PW-18 seized a photocopied deed which was produced by Om Prakash (PW-8), the

brother-in-law of the deceased. In his deposition, PW-8 states that the deceased had handed over to him a bunch of documents pertaining to his house

which he had executed in favour of PW-1. The bunch (Ex.PW-3/B1-B8) included a General Power of Attorney, a Gift Deed, a Will, and a possession

letter.

Trial

11. Upon the investigation being concluded, a charge sheet was filed and by an order dated 3rd January 2014 of the trial Court, the Appellant was

charged in the manner indicated hereinbefore. On behalf of the prosecution, 19 witnesses were examined. The incriminating circumstances put to the

Appellant under Section 313 Cr PC were denied by her. She denied having gone to the PS of her own volition and surrendering in her bloodstained

clothes. Her line of defence was that she was in fact arrested from her house. She denied that there was any illicit relationship between the deceased

and PW-1 or that she had any suspicion in that regard. She maintained that the bloodstained clothes did not belong to her and were planted on her by

the police. She also denied that the broken bangles belonged to her.~

12. When asked why the witnesses had deposed against her, the Appellant stated that she had been falsely implicated in the present case by the police

who were acting in collusion with PW-1 and one Amit:~

~“They are interested witnesses and have deposed falsely against me. Sapna and Amit wanted to marry each other but on my refusal for the same,

Sapna and Amit had murdered my husband and in order to grab that house, they transferred the said house in the name of Sapna by fraud.~

Defence witnesses

13. Two defence witnesses were examined. Prabhat (DW-1), the brother of the Appellant, stated that PW-1 was in a relationship with one Amit and

that the Appellant used to object to the said relationship and therefore, there used to be tensions between PW-1 and the Appellant. He claimed not to

know anything about the relationship between PW-1 and the deceased. In his cross-examination, he admitted that there was a dispute between the

Appellant and the deceased and that it was regarding Sapna and that the deceased had slapped the Appellant. He also said, "It is correct that today

I have come with my sister,

14. The other defence witness examined was Sushil Kumar (DW-2), the brother-in-law of the Appellant. He claimed to have seen Amit at the house

of the deceased one year prior to the incident. He claimed that the Appellant and the deceased were having cordial relations and they never had any

quarrel between them. He admitted that in his presence, Amit had never gifted anything to PW-1. In his cross-examination, he stated that he was not

sure about the nature of the relationship between the Appellant and the deceased and clarified that what he meant by his statement in the

examination-in-chief was that they had never quarrelled in his presence.

Judgment of the trial Court

15. After undertaking a detailed analysis of the evidence on the record, the trial Court concluded as follows:

(i) The FSL report has established that the clothes of the Appellant contained the bloodstains of the deceased;

(ii) The testimonies of PWs 1, 7, and 18 had proved that the Appellant had surrendered before the police after the incident and was arrested by PW-

18 in the presence of PWs 1 and 7;

(iii) Even if the admission of guilt by the Appellant at the time of her surrender would be hit by Section 26 Indian Evidence Act, 1872 (IEA), the

recovery of the bloodstained clothes from her could not be disregarded. She had no explanation for the blood found on her clothes. The argument of

the counsel for the Appellant that these clothes were planted on her could not be accepted;

(iv) With the recovery of the clothes of the Appellant containing the bloodstains of the deceased, the burden shifted onto the Appellant to explain how

such blood came to be on her clothes. The presumption under Section 106 IEA would be attracted. In the absence of a rebuttal to the said fact, it had

to be presumed that the Appellant was present with the deceased at the time of his murder;

(v) The FSL report noting the similarity of the metal in the broken bangle pieces found at the spot and those seized from the Appellant at the PS

strengthened the case of the prosecution that it was the Appellant who had killed the deceased;

(vi) The Appellant serving milk to PW-1 after which she went to sleep, providing medicines to the deceased, and her absence when the police reached

her house further proved that it was the Appellant who was last seen with the deceased before he was killed. She had no explanation for her absence

from the spot when the police reached there. PW-1 deposed that she went to the parental house of the Appellant with the police and the brother and

brother-in-law of the Appellant were brought to the PS. This also shows that she was not even at her parental house soon after the incident.

(vii) No question was put by the Appellant during the cross-examination of PW-19, who was treating the deceased, as to whether she had visited him

on the fateful day to take medicines. Thus, it was proved that the Appellant was alone with the deceased in the house at the time of the incident since

the children had already gone to school by then. PW-1 was sleeping in the other room. Unless it was proved that someone else had entered the room,

which was not even the case of the Appellant, no other person could be held responsible for the killing of the deceased. There was no effective

rebuttal of this presumption by the Appellant.

(viii) There was no evidence to show that PW-1 was in a relationship with Amit or that the Appellant used to oppose that relationship. No question to

the effect was put to the DWs during their examination.

(ix) The post-mortem examination proved that the death was homicidal. In all probability, the strangulation was by the dupatta recovered from the

Appellant.

16. The trial Court concluded that it was the Appellant who committed the murder of the deceased. It proceeded to convict her for the offence

punishable under Section 302 IPC and sentenced her in the manner indicated hereinbefore.

17. This Court has heard the submissions of Mr. Joginder Tuli, the learned counsel for the Appellant, and Mr. Kewal Singh Ahuja, the learned APP

for the State.Ã, Ã,

Law relating to circumstantial evidence

18. This is a case of circumstantial evidence with there being no direct evidence to the crime. The law relating to circumstantial evidence may be

briefly recapitulated. The Supreme Court, in Shankarlal Gyarasilal Dixit v. State of Maharashtra (1981) 2 SCC 35, explained the law thus:Ã,

Ã¢â¬ÅSince this is a case of circumstantial evidence, it is necessary to find whether the circumstances on which the prosecution relies are established by

satisfactory evidence, often described as 'clear and cogent' and secondly, whether the circumstances are of such a nature as to exclude every other

hypothesis save the one that the appellant is guilty of the offences of which he is charged. In other words, the circumstances have to be of such a

nature as to be consistent with the sole hypothesis that the accused is guilty of the crime imputed to him.Ã¢â¬Å,

19. In Tanviben Pankaj Kumar Divetia v. State of Gujarat (1997) 7 SCC 156, the Supreme Court reiterated the above position and observed:Ã,

Ã¢â¬ÅThe principle for basing a conviction on the basis of circumstantial evidence has been indicated in a number of decisions of this Court and the law

is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so

proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other

hypothesis against the guilt is possible. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence,

there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the

chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence

of the accused. It has also been indicated that when the important link goes the chain of circumstances gets snapped and the other circumstances

cannot, in any manner, establish the guilt of the accused beyond all reasonable doubts. It has been held that the Court has to be watchful and avoid the

danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between normal

certainty and legal proof. It has been indicated by this Court that there is a long mental distance between ""may be true"" and must be true"" and the

same divides conjectures from sure conclusions.Ã¢â€

Last seen evidence

20. The first circumstance that is sought to be proved against the Appellant is that the deceased was last seen with her in their house shortly before

his death. The key witness for the prosecution for this purpose was PW-1, the niece of the deceased. She referred to an earlier incident where DW-1,

Uma and Urmila (the sisters of the Appellant) and Susheel (DW-2) had come to their house, beaten up her uncle (the deceased) and her, taken them

to their house at Loni, and confined them there for two days. The deceased was thereafter admitted to a nursing home at Loni. Thereafter, PW-1, the

deceased, the sons of the Appellant and the Appellant came back to the house of the deceased. According to PW-1, this incident was reported to the

police but the matter was compromised.

21. PW-1 is further explained that on 9th July 2013, at about 9.30 am, the Appellant went to buy milk and PW-1 went upstairs to her room. The

Appellant gave PW-1 and the deceased milk which was mixed with turmeric after which PW-1 went to sleep. The children of the Appellant had

already gone to school in the morning. At around 10.30 am, PW-1 woke up, she wanted to have food but found that the door of her room was latched

from the outside. She states that she came out through a window in her room. When she went downstairs, she found that the main door of the house

was latched from outside and the door of the room of the deceased was also latched from outside. When she opened the door of the room of the

deceased, PW-1 found him lying on the floor in a pool of blood. She noticed that he had been slashed by a knife on his throat. She found that the

Appellant was not inside the house. She had a SIM card in her mobile phone belonging to Amit, from which she called the PCR and informed them

that a murder had been committed. About 15-20 minutes later, the police arrived at the spot. They took some broken pieces of bangles, sample of

blood on gauze and broke the floor where the blood was lying and took the part of it with them.

22. PW-1 then stated that the police thereafter took her to the parental house of the Appellant. Prabhat (DW-1) and Sushil (DW-2) were brought

from there to the PS. PW-1 also volunteered that the house in which the deceased lived was transferred by him to her name and "therefore there

used to be regular fighting between my uncle and my aunt. There was no other reason of fight between my uncle and my aunt". According to PW-1,

the PCR team already informed her that before she had called the PCR, the Appellant had gone to the PS. When PW-1 reached the PS, she found

her aunt there and "saw that her clothes were having bloodstains".

23. PW-1 was subjected to extensive cross-examination by the learned counsel for the defence. There was some confrontation vis-a-vis her previous

statement to the police. However, on the key aspects about the presence of the Appellant with the deceased on the morning of the incident; the

Appellant giving medicines to the deceased on the date of the incident; and her finding the deceased lying on the floor in a pool of blood after opening

his room from outside and not finding the Appellant there, there is no confrontation. In other words, on the material aspects of her deposition, PW-1

stood firm and was not shaken in the cross-examination.~

24. The trial Court has found PW-1 to be a reliable witness and so does this Court. The alternate theory floated by the defence before the trial Court

about PW-1 being in a relationship with one Amit to which the Appellant and the deceased objected has not been able to be established at all by the

defence by even a shred of evidence.~

25. We also have the evidence of Uday (PW-9), the elder son of the Appellant and the deceased, who states that 4-5 days prior to his father's death,

~“my maternal uncle Parmar, two maternal aunts, namely, Urmila and Uma and my Mause Sushil had beaten up my father~. He also confirmed

that a document was burnt by Urmila but he could not see what document it was. He confirmed that he and his brother had already left for school at 6

am on the morning of the incident. His cross-examination too did not yield anything for the Appellant.

Motive proved

26. The evidence of PW-10, which again has not been seriously challenged by the defence He is an uncle of PW-1. He confirmed that shortly prior to

the murder of the deceased, he had transferred property in which he and the Appellant were staying in the name of PW-1. Certainly, this was the

trigger for the quarrel between the Appellant and the deceased. Significantly, even in the evidence of DW-1, the said quarrel has been adverted to.~

27. Therefore, far from PW-1 being involved in the murder of the deceased, there was every reason for the Appellant to be upset with the deceased.

This coupled with the fact of the grievous incident of violence involving the family of the Appellant and the deceased, as spoken to by PW-1

sufficiently establishes for motive for the crime.~, ~

Homicidal death

28. The medical evidence in the present case more than adequately proves that the death was homicidal and this again has not been seriously

challenged. It is also clearly establishes that it was the ante-mortem strangulation injury that caused the death of the deceased.Ã,

29. The possibility of the strangulation by the dupatta of the Appellant could not be ruled out. In this context the following analysis of the evidence by

the trial Court merits approval by this Court:

Ã¢â¬As per injury 27 of the post mortem report, the cause of death was Asphyxia by strangulation and ligature mark horizontally and completely

around the neck at the level of thyroid cartilage was found. In fact, this reason itself suggests that the cause of death was strangulation which was

duly possible by a dupatta recovered from accused. And nothing adverse has been suggested to PW5 by the accused that the injury 27 was not

possible by the said green color dupatta Ex.P3 having blood stains and recovered from the accused.Ã¢â¬

Forensic evidence corroborates

30. The FSL report in the present case confirmed that broken pieces of bangle found near the body of the deceased matched the metal of the bangles

recovered from the hands of the Appellant when she surrendered at the PS of her own. Further the FSL report confirmed that the DNA blood stains

on the clothes of the Appellant matched the DNA of the deceased. Mr. Joginder Tuli, learned counsel for the Appellant, seriously questioned the

evidence regarding the bloodstained clothes of the Appellant and volunteered that they were planted on her by the police.Ã,

31. As already noticed by the trial Court, there was no occasion whatsoever for the police to falsely implicate the Appellant by planting the

bloodstained clothes on her. That she came to the PS herself has been spoken to not only by PW-18 and PW-1 but also PW-7, the woman constable.

As correctly noticed by the trial Court, it is not that every police witness is unreliable. required to be disbelieved unless it is shown that they were

deliberately trying to falsely implicate the accused as explained in Baldev Singh v. State of Haryana 2015 (12) SCALE 308 the Supreme Court held:

“10. There is no legal proposition that evidence of police officials unless supported by independent evidence is unworthy of acceptance. Evidence

of police witnesses cannot be discarded merely on the ground that they belong to police force and interested in the investigation and their desire to see

the success of the case. Prudence however requires that the evidence of police officials who are interested in the outcome of the result of the case

needs to be carefully scrutinized and independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about

their creditworthiness.”

32. Here, PW-7 withstood extensive cross-examination and maintained that the Appellant had surrendered before the police after the murder of her

husband. There may have been some slight discrepancies as regards the time of the arrest of the Appellant which, in the considered view of the

Court, are not so serious as to discredit the entire case of the prosecution. With PW-7 having been corroborated by PW-1 and PW-18, the Court finds

no reason to disbelieve the case of the prosecution as regards this important link in the chain of circumstances.”

33. As rightly pointed out by the trial Court, the Appellant has no explanation whatsoever to offer except alleging that the bloodstained clothes were

planted on her. Apart from his defence not having been established by any evidence whatsoever, the fact remains that the Appellant had no

explanation to offer as to how the blood of the deceased was found on her clothes.”

Section 106 IEA

34. Mr. Tuli offered an explanation that the Appellant had gone to buy medicines and when she came back she found the deceased murdered and

then walked to the police station to inform them of the incident. As rightly noticed by the trial Court, since a call had already been made by PW-1 as

early as 10.48 am and the police reached the spot as early as at 11 am, there was no occasion for the Appellant to walk to the PS to give a complaint

with regard to the murder of her husband. On the contrary, the evidence clearly shows that it was the Appellant who has last seen with the deceased

prior to his being murdered. The evidence of PW-1 in this regard has already been discussed.~

35. As rightly pointed out by the trial Court, the presumption under Section 106 IEA is attracted and the Appellant has not been able to rebut such

presumption which leads to an inevitable adverse inference being drawn against her about her guilt for the murder of her husband.~ , ~

Conclusion

36. With all the links in the chain of circumstances being proved beyond reasonable doubt by the prosecution, the only possible conclusion that could be

arrived at is that it is the Appellant alone and no one else who has committed the murder of her husband.~

37. Consequently, the Court finds that no ground is made out which warrants interference with the impugned judgment and order on sentence of the

trial Court. The appeal is accordingly dismissed. The trial Court record be returned forthwith along with a certified copy of this judgment.